86-1244

Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STONEY GENE GOLDEN,

Petitioner,

v.

CLARENCE W. DUPNIK, Sheriff
of Pima County, Arizona,

Respondent,

and

THE STATE OF ARIZONA,
Real Party in Interest.

PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

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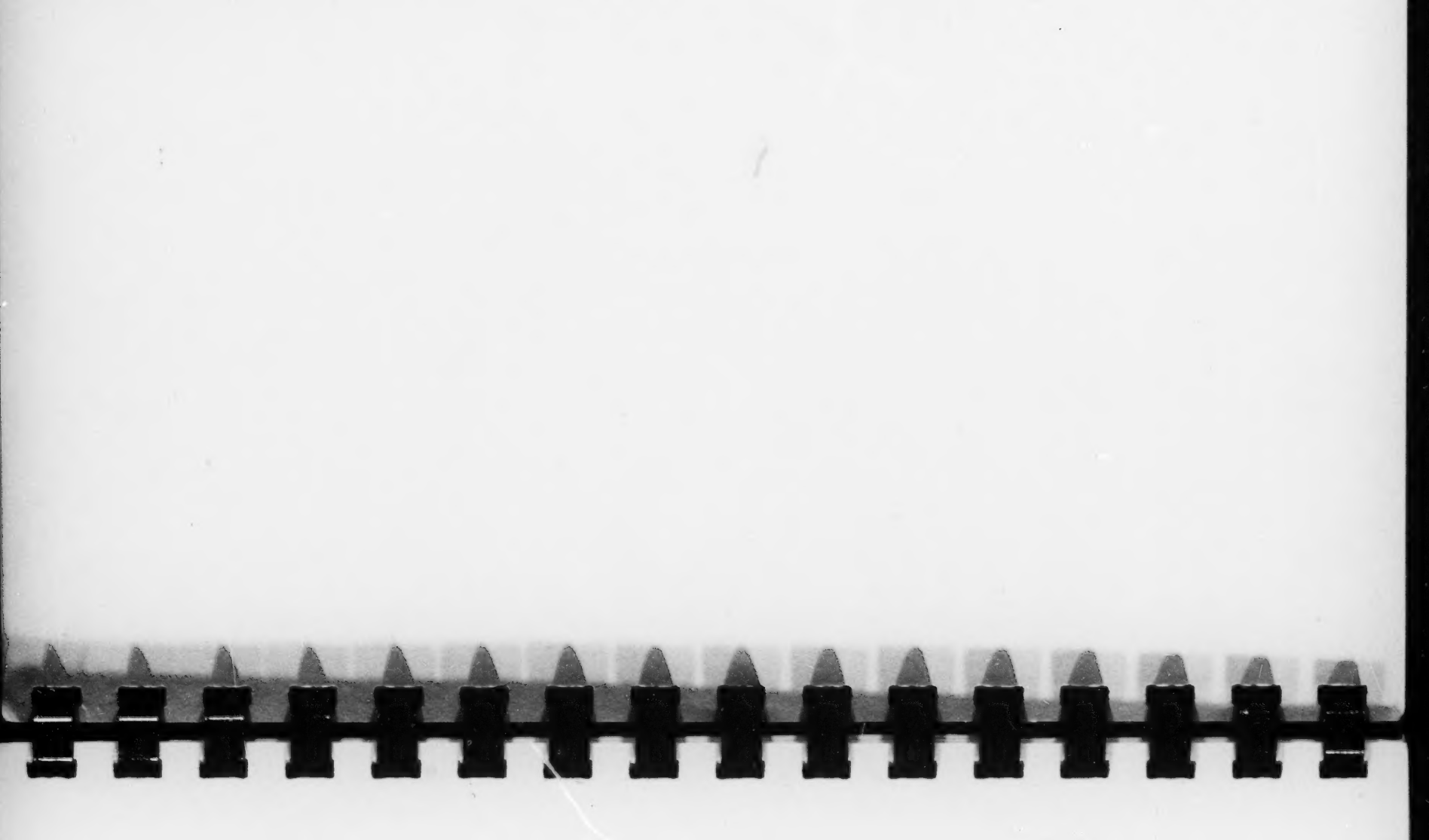

I

QUESTIONS PRESENTED

A. Whether the Petition for Writ of Habeas Corpus was erroneously denied since the arrest warrant was jurisdictionally fatally defective in that it was issued by a judge who has a personal interest in the outcome of the proceedings thereby violating Petitioner's fundamental federal constitutional rights of due process.

B. Whether the Petition for Writ of Habeas Corpus was erroneously denied since the arrest warrant was jurisdictionally fatally defective in that it is being prosecuted by a County Attorney who has a direct and personal interest in the outcome thereby violating Petitioner's fundamental constitutional rights.

C. Whether the Petition for Writ of Habeas Corpus was erroneously denied since the arrest warrant was jurisdictionally fatally defective in that the supporting Divorce Decree upon which the crime was alleged is void.

D. Whether the Petition for Writ of Habeas Corpus was erroneously denied since the arrest warrant does not substantially charge a crime under Tennessee laws.

E. In Determining whether the arrest warrant is valid for purposes of extradition, whether a court should also consider the web of other improprieties surrounding the issuance of the warrant.

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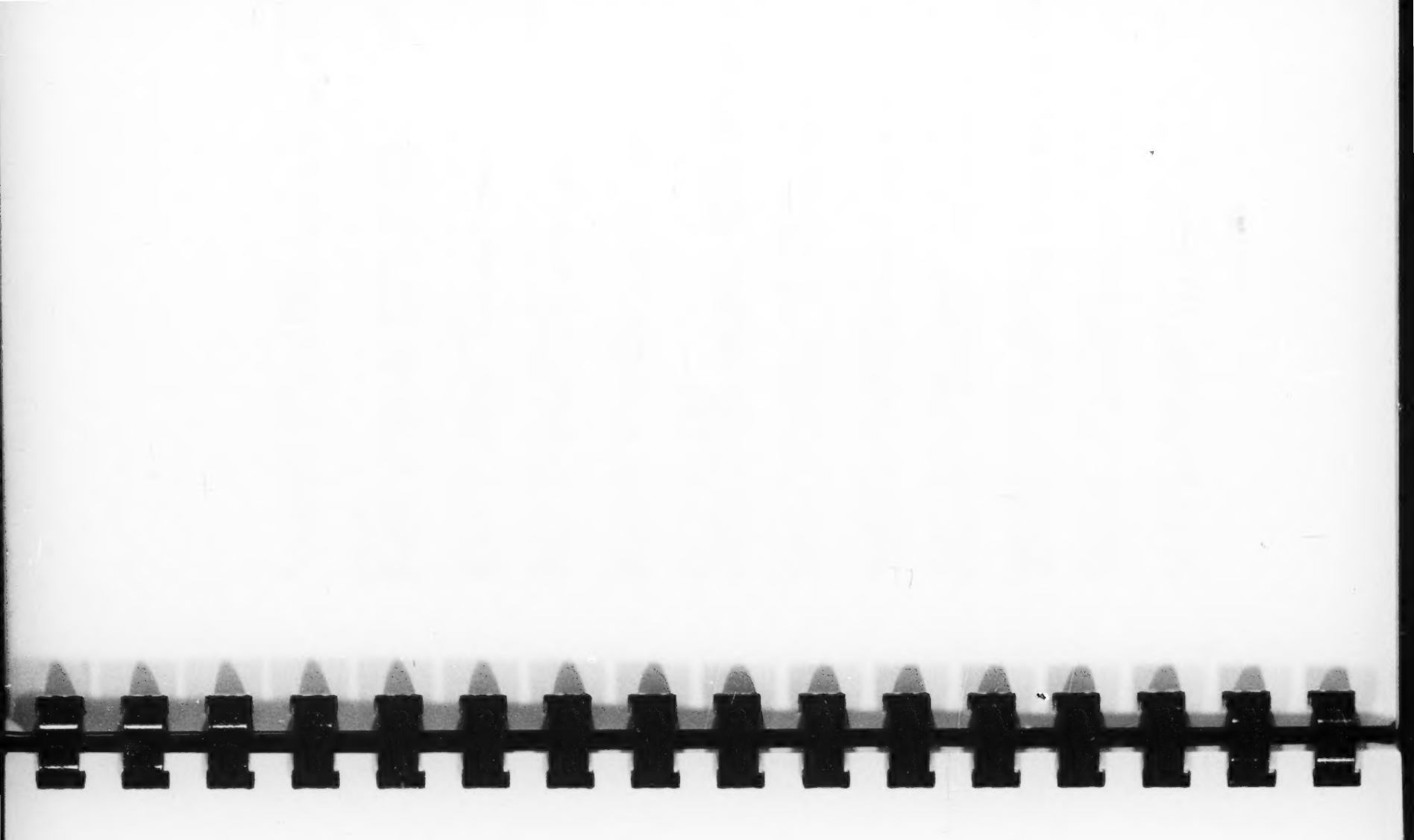

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**PETITION FOR A WRIT OF CERTIORARI
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Opinion Below

The Opinion of the Arizona Court of Appeals is set forth in the Appendix attached herein, pages A-2 through A-18.

This Opinion was denied review by the Arizona Supreme Court as is set forth in the Appendix attached herein, page A- 1.

Jurisdiction

The Petitioner herein seeks review of the Opinion and Order of the Arizona Court of Appeals rendered on May 22, 1986, and subsequently denied review by the Arizona Supreme Court on October 5, 1986. By denying the Petition for Review, the Arizona Supreme Court let stand the lower court's ruling denying Petitioner's Petition for Writ of Habeas Corpus. In effect, this ruling permits a State to proceed with extradition proceedings despite underlying defects in the foundation upon which such proceedings are based. In the instant case, an arrest warrant was issued by a judge and prosecuted by a county

attorney, both of whom had personal interests and undisputed biases in the outcome of the original proceedings. Further, to the extent the arrest warrant charged a violation of non-existent statute at the time of its issuance, an issue exists as to whether it may substantively charge a crime. A substantial question also exists as to whether or not Petitioner can be charged with a crime the elements of which are dependent upon a valid custody order where a court did not have proper jurisdiction in the first instance to render such an Order. By acting in disregard of these issues, Petitioner alleges that his rights pursuant to the United States Constitution were violated.

The Court's jurisdiction to review the Arizona Supreme Court decision by Writ of Certiorari is conferred by 28

U.S.C. Section 1257(3).

Constitutional Provisions Involved

1. The Fourth Amendment to the Constitution of the United State.

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures and shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

2. The Fourteenth Amendment to the Constitution of the United States.

> All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. Article VI, The Supremacy Clause of the Constitution of the United States.

> This Constitution and the Laws of

> the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding.

4. Other relevant federal statutes are:

> 28 U.S.C. Section 1257(3)
> 28 U.S.C. Section 1738(A)

Statement of the Case

This Petition comes before this Court as a request to review an Order of the Arizona Supreme Court which denied Petitioner's request for review of a decision and opinion of the Arizona Court of Appeals.

STONEY GOLDEN is the natural father and CANDIE GOLDEN, a/k/a CANDIE TAYLOR, but referred to herein as CANDIE GOLDEN or MRS. GOLDEN, is the natural mother of CHASEY GOLDEN, a male child, born on December 28, 1979. STONEY GOLDEN and

CANDIE GOLDEN were married in Tennessee on September 12, 1979. On May 22, 1982, STONEY GOLDEN, CANDIE GOLDEN and CHASEY GOLDEN were residents and domiciliaries of the State of Florida where they had resided for approximately 10 months upon relocation from the State of Tennessee, along with STONEY's brother and parents.

On May 20, 1982, the elder Goldens, who had also moved the family jewelry business to Florida, made plans for a two day trip to Tennessee to finish up some of their business affairs there. With the permission and consent of both CANDIE and STONEY GOLDEN, the elder Goldens took CHASEY GOLDEN with them with the intent of returning within a few days. With the knowledge of both STONEY and CANDIE, the elder Goldens stopped for the night in Alabama to stay with relatives. In the middle of the night of May 20, 1982,

CANDIE GOLDEN, without the knowledge or consent of STONEY GOLDEN, fled from the State of Florida, stopped in Alabama, physically removed the child from the care of the elder Goldens and arrived in Tennessee.

On May 21, 1982, less than twenty-four hours after leaving Florida, CANDIE GOLDEN, who had been living in Florida for the preceding ten months, filed a Complaint for Divorce in Franklin County, Tennessee seeking custody of the minor child. Tennessee has a six month residency requirement. Florida would have had jurisdiction. The Tennessee Court records indicate that the Complaint admits STONEY GOLDEN was not a resident of Tennessee, but instead, a resident of Panama City, Florida. STONEY GOLDEN was sent a non-resident notice by certified return receipt mail. STONEY GOLDEN

conferred with Florida counsel at the time all of whom were either unwilling or unable to litigate the action once the action in Tennessee had commenced. Faced with that STONEY GOLDEN journeyed back to Tennessee for the sole purpose of defending in the divorce action and to obtain custody of his minor child.

While in Florida, STONEY GOLDEN, through counsel, obtained the sworn statements of four witnesses who testified as to the residence of CANDIE, STONEY and CHASEY GOLDEN in the State of Florida for the period of time immediately preceding the filing of the Petition for Divorce in Tennessee. In addition there was a notarized statement from STONEY GOLDEN's employer and other documents verifying STONEY GOLDEN's employment and CANDIE GOLDEN's employment in the State of Florida.

Despite the lack of jurisdiction over either STONEY or CANDIE GOLDEN, the Tennessee Court dissolved the marriage on August 20, 1982, and in so doing, awarded custody of the minor child to MRS. GOLDEN. The Decree itself makes no finding of jurisdiction of the Tennessee Court.

The entire divorce action was marked by unfairness and bias. The strongest example of this is the representation by Mr. Joe Bean of MRS. GOLDEN. On two previous occasions, Mr. Joe Bean had represented STONEY GOLDEN. Mr. Bean used information obtained from the confidential attorney-client relationship against MR. GOLDEN in the divorce action. Documents in this Court's file indicate that MR. GOLDEN complained about this unfairness, that MR. GOLDEN's counsel insisted that Mr.

Bean withdraw, that Mr. Bean refused, that the Judge knew about the conflict of interest but that nothing was done. Ultimately bar disciplinary proceedings were instituted against Mr. Bean; however, he died before a decision was reached.

During the time that CANDIE GOLDEN had custody of the minor child, MR. GOLDEN observed abuse and neglect of the minor child. This abuse occurred while the minor child was in the care of Lonnie Taylor and his other children. Lonnie Taylor is CANDIE GOLDEN's step-father. One of the step-brothers living in the home was retarded and abusive. At one point the minor child had been cut with a knife between toes on both feet. He had been held down while this occurred by the retarded step-brother. On numerous occasions, STONEY GOLDEN observed cuts

and bruises on the child which the child attributed to Lonnie Taylor and the step-brother.

STONEY GOLDEN did everything he could within the context of the system to get help for his child. The uncontradicted record indicated pleas of help from a Dr. Jones, MR. GOLDEN's congressman, the governor, a local judge (who then recused himself from the case for being a witness), the Hank Snow foundation, a doctor, the National Child Abuse Foundation and the local Human Services Department. All of the agencies, in responsive correspondence submitted at the hearing, referred MR. GOLDEN to the local Human Services Department. The Human Services Department sent a friend or acquaintance of MRS. GOLDEN's to investigate the situation and closed the case.

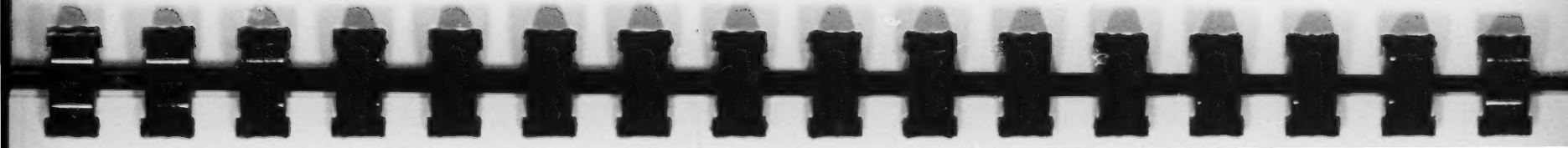
After completely exhausting his resources in Franklin County, Tennessee and after realizing that the authorities would not take any action against Lonnie Taylor or CANDIE GOLDEN to protect the child and after realizing it would be impossible to get a fair hearing there, STONEY GOLDEN left the State of Tennessee in January of 1983.

Ultimately, Appellant arrived in the State of Arizona approximately two and one half years ago and has been here since that time.

In the meantime, on January 5, 1983, based solely on the Affidavit of CANDIE GOLDEN, Judge Floyd Don Davis issued an arrest warrant for MR. GOLDEN for kidnapping. This Judge had previously represented CANDIE GOLDEN in the divorce action which gave rise to the criminal proceedings herein.

On May 4, 1985, STONEY GOLDEN was arrested in Arizona on the Tennessee arrest warrant and the minor child was placed in Child Protective Services custody here. MR. GOLDEN informed them of the history of abuse and provided them with some pictures. At that time, Mr. Gregory Hayes gave MR. GOLDEN until 5:00 P.M. on May 7, 1985 to obtain a Temporary Restraining Order.

At 4:51 P.M. on May 7, 1985, Judge Pro Tem Margaret Houghton of the Arizona Superior Court signed an Order restraining MRS. GOLDEN from taking custody of the child and granting temporary custody to MR. GOLDEN. Judge Houghton telephoned Child Protective Services. At that time, the child had not yet been released. MRS. GOLDEN and her attorney, Edward Linden, Lonnie Taylor and Child Protective Services



received actual notice of the Order. MRS. GOLDEN was informed that a hearing under Arizona law could be obtained within two days and that she could not take the child unless and until the Order was dissolved.

Between 5:00 P.M. - 6:00 P.M., before a hearing on the merits could be held, in knowing and willful contemptuous violation of the Arizona Order, Lonnie Taylor and CANDIE GOLDEN fled across state lines with the minor child by taxi-cab to Texas. MRS. GOLDEN advised her attorney, by telephone, that she would not return to the State of Arizona.

Ultimately, a Petition for Contempt was filed against CANDIE GOLDEN and Lonnie Taylor. Service of the Contempt Petition was effectively served on Mr. Linden. Service of the Contempt Petition on Mr. Taylor was effectuated. However,

the attorney for MR. GOLDEN in Tennessee, has to date refused to send the affidavit due to threats allegedly from the "D.A."

The evidence adduced at the domestic hearing indicated that in preparation for this hearing, witnesses and potential lawyers for Appellant had been threatened. The Sheriff of Franklin County had informed Appellant's parents that he could not guarantee STONEY GOLDEN's safety if he returned there.

At one point, MRS. GOLDEN and Lonnie Taylor posed as law enforcement officials in Dyer, Texas to effectuate an invalid warrant to bring back some of the Golden's relatives to Tennessee on Conspiracy to Kidnap charges. The Texas Sheriff recognized the imposters for what they were and ordered them out of his jurisdiction. Nevertheless, the Goldens' relatives had to appear in Tennessee and

post bond on these charges in front of the same judge issuing the warrant in this case.

Even before MR. GOLDEN was discovered in the State of Arizona, his attorney, Mr. Denty Cheatham, communicated with the County Attorney there about all of the problems that have been described in this hearing. He requested that a neutral forum be used to address the issues. The request was refused.

A hearing on whether the Temporary Restraining Order should be made permanent was heard by the Honorable Judge Pro Tem Raner Collins on May 17, 1985. On August 8, 1985, he ruled that Arizona did not have jurisdiction to grant custody in MR. GOLDEN. That ruling is on appeal with this Court. MR. GOLDEN was incarcerated on August 9,1985 for

purposes of extradition to the State of Tennessee on the charge of kidnapping as specified in the Tennessee arrest warrant. MR. GOLDEN was held without bond from August 9, 1985 to February 7, 1986. A Writ of Habeas Corpus was filed by MR. GOLDEN's attorneys on August 16, 1985. After a hearing on August 30, 1985, the Writ of Habeas was denied. A Notice of Appeal from the Denial of Writ of Habeas Corpus was filed on August 30, 1985. A Stay of Execution of the extradition proceedings was sought and obtained on September 3, 1985 pending appeal. A Motion for Bail was filed on November 27, 1985 by MR. GOLDEN's attorneys; that Motion was denied on January 9, 1986. Upon Stipulation and Order for release, MR. GOLDEN was released on bond pending exhaustion of his remedies on February 7, 1986.

MR. GOLDEN sought relief from Denial of the Writ of Habeas Corpus by the trial judge on appeal. On May 22, 1986 the Arizona Court of Appeals rendered its opinion, denying relief to MR. GOLDEN.

A Petition for Review was filed with the Arizona Supreme Court which in turn denied review on October 5, 1986.

Reasons for Granting the Writ

Petitioner believes that the state court of appeals in this case by its ruling has decided a important questions of federal law which have not been, but should be, settled by this Court.

A. The arrest warrant was jurisdictionally defective because it was issued by a judge who has a personal interest in the outcome of the proceedings thereby violating Petitioner's fundamental federal

Constitutional rights of due process under the Fourth and Fourteenth Amendments.

This Court has long held inviolate the principle that the person issuing an arrest or search warrant must be a "neutral and detached Magistrate." Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367 (1948). It is the very essence of our system of law and is unassailable without attacking our system of law as we know it today.

The Supreme Court in Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963) described the rationale specifically when it stated:

> "The arrest warrant procedure serves to insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause...To hold that an officer may act in his own, unchecked discretion upon

> information too vague and from too untested a source to permit a judicial officer to accept it as probable cause for an arrest warrant,would subvert this fundamental policy." Wong Sun, supra at page 414.

To hold otherwise would create havoc with our system of justice:

> "The history of the use, and not infrequent abuse, of the power to arrest cautions that a relaxation of the fundamental requirements of probable cause would 'leave law-abiding citizens at the mercy of the officers' whim or caprice.'" Brinegar v. United States, 338 U.S. 160, 176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879. Wong Sun, supra, at page 413.

See also, Chadwick v. Tampa, 407 U.S. 345, 92 S.Ct. 2119 (1972) [where the United States Supreme Court held that an issuing Magistrate must meet two tests: he must be neutral and detached and he must be capable of determining whether probable cause exists for the requested arrest.]

The requirement of neutrality is so

deeply entrenched as a penumbral constitutional right that it has been held on numerous occasions that a a magistrate must avoid even the appearance of impropriety. For example, In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955), The United States Supreme Court ruled that the fact that the same judge who had sat as the "judge-grand jury" before which witnesses had testified presided at a contempt hearing wherein witnesses were adjudged in contempt or their conduct before the "one-man grand jury" constituted a violation of due process. In making this ruling, the Supreme Court acknowledged the time-honored rule that a fair trial in a fair tribunal is a basic requirement of due process and requires an absence of actual bias by the judge. See In re Murchison, supra, 75 S.Ct. at page 625. The Court

reasoned that the judge here would have gained personal knowledge to which he would not otherwise be privy and that the State would have the benefit of the judge's personal knowledge. Id., at page 627.

To this end "no man is permitted to try cases where he has an interest in the outcome." Id. at page 625. This is true even if it "may sometimes bar trial by judges who have no actual bias." Id. at page 625. Rather, "justice must satisfy the appearance of justice." Id. at page 625.

Judge Floyd Don Davis signed the arrest warrant charging the Petitioner with kidnapping. The arrest warrant was signed by Judge Davis solely upon the affidavit of CANDIE GOLDEN. Before becoming a judge, Mr. Davis served as CANDIE GOLDEN's attorney in divorce

proceedings against STONEY GOLDEN. As such, he was personally embroiled in the civil litigation which gave rise to the criminal proceedings herein as an advocate for the same affiant who asked him to sign the arrest warrant. It is astonishing that Judge Davis did not recuse himself from the case. By signing the arrest warrant based on the affidavit of his former client, he committed the worst type of judicial impropriety. Indeed, Judge Davis was privy to a much more personal kind of information than that condemned by the Supreme Court in In re Murchison, supra when he took the word of his former client in signing the arrest warrant.

The Arizona Supreme Court has also condemned such actions. See for example, State v. Brown, 124 Ariz. 97, 602 P.2d 478 (1979) when it reversed the

conviction of a defendant because of the conduct of a judge which gave and appearance of a hostile feeling or spirit of ill will towards the defendant:

> "A judge must be careful never to act in the dual capacity of judge and advocate..." State v. Brown, supra, 124 Ariz. at page 100.
>
> ***
>
> "A judge should avoid even the appearance of partiality, Taylor v. Hayes, 418 U.S. 488, 94. Sct. 2697, 41 L.Ed. 2d 897 (1974); ABA Standards, supra, Section 1.7.

See also, Offutt v. United States, 348 U.S. 11, 75 S.Ct. 11 (1954). [where even personal embroilment by the judge with counsel which arose during the trial was condemned as a denial of due process]; Connally v. Georgia, 429 U.S. 245, 97 S.Ct. 546, 50 L.Ed.2d 444 (1977) [where the Supreme Court held that one who has a direct, personal, substantial, or pecuniary interest in the issuance of a

warrant does not qualify as a neutral, detached, disinterested Magistrate.]

A case similar to Mr. Golden's is Merritt v. Hunter, 575 P.2d 623 (Oklahoma Supreme Court, 1978). In Merritt, supra, an Oklahoma Judge refused to disqualify himself in connection with the pending child custody proceedings. The Judge had previously testified in a Kansas court during a hearing on a Petition for a Writ of Habeas Corpus in connection with the case. His testimony was limited solely to identifying the original Oklahoma Court file and explaining Oklahoma law to the Kansas Judge. Despite this limited involvement, the Oklahoma Supreme Court held that the Judge had abused his discretion when he refused to disqualify himself in the pending custody proceeding.

Surely the involvement of Judge Davis

in this case is far more substantial than the judge's involvement in Merritt, supra,. Judge Davis had actually formed an attorney-client relationship with the complaining witness and could not serve as a fair and impartial judge.

B. The denial of the Petitioner's Petition for Writ of Habeas Corpus and granting of the extradition request was prejudicial error because the arrest warrant was fatally defective in that it is being prosecuted by a county attorney who has a direct and personal interest in the outcome thereby violating Petitioner's fundamental Constitutional rights.

The bias of a prosecutor bears the same stigma that the bias of a judge does in the context of constitutional guarantees. CANDIE GOLDEN is represented by Ben Lynch. Ben Lynch is in

partnership with his brother, Mike Lynch. Mike Lynch is also the District Attorney of Franklin County. The District Attorneys' office, headed by William Pope, is extraditing the Petitioner. Mike Lynch is heading the prosecution.

The constitutional doctrine of separation of powers prohibits a prosecutor from prosecuting a case in which he has a special interest. See Ganger v. Peyton, 379 F.2d 709 (4th Cir. 1967); Young v. State (Fla. App. 1965), 177 So.2d 345; State v. Leigh, 178 Kan. 549, 289 P.2d 774 (1955); Corbin v. Broadway, 6 Ariz. App. 436, 433 P.2d, 289; Sinclair v. State, 278 Md. 243, 363 A.2d 468 (1976); Annot., 31 A.L.R. 3d 953, 963-978.

Indeed the same fundamental constitutional principles of due process that require a judge to be neutral and

disinterested also require that a prosecutor be neutral and disinterested. As the California Supreme Court stated in People v. The Superior Court of Contra Costa County, 137 Cal. Rptr. 476, 561 P.2d 1164:

> "Nor should a prosecutor try a defendant with whom he is embroiled in civil litigation." Contra Costa, supra at page 1168.
>
> ***
>
> A fair and impartial trial is a fundamental aspect of the right of accused persons not to be deprived of liberty without due process of law. (U.S. Const., 5th and 14th Amends....It is the obligation of the prosecutor, as well as of the court, to respect this mandate. (Berger v. United States (1935) 295 U.S. 78, 88, 55 s.Ct. 629, 79 L.Ed. 1314..."Contra Costa, supra, 561 P.2d at page 1171.

See People v. Conner, 34 Cal.3d 141, 666 P.2d 5 (Cal. Sup. 1983) [where the California Supreme Court mandated that a district attorney may prosecute vigorously but the accused and the public

have a legitimate expectation that his zeal will be born of objective and impartial consideration of each case].

The District Attorney's Office in Franklin County is well aware of the conflict and is aware that it should recuse itself.

In this case, the prosecutor's brother represents Mr. Golden's ex-wife. The prosecutor and his brother are also in private practice together. To honor an arrest warrant based on a conflict of interest of the highest order such as this is totally destructive of Mr. Golden's fundamental constitutional right to fairness at the most basic level. The indictment signed by William Pope should not be honored. His office has a blatant conflict of interest and is powerless to prosecute this action.

C. The arrest warrant was

jurisdictionally fatally defective because the supporting Divorce Decree upon which the crime was alleged is void.

The Divorce Decree of STONEY GOLDEN and CANDIE GOLDEN was part of the supporting documents sent by Tennessee. That Decree is invalid for the following reasons:

1. The Decree was obtained through attorney misconduct.

The Divorce Decree was signed by chancellor Tyrus Cobb. It is also signed by Joe Bean, as the attorney for CANDIE GOLDEN, and by Jerre Hood, as the attorney for MR. GOLDEN. In two prior actions for divorce which had been filed by MRS. GOLDEN against MR. GOLDEN, Joe Bean represented MR. GOLDEN. Mr. Bean obtained confidential information the course of his representation of MR. GOLDEN and later was able to use that

information against MR. GOLDEN when he switched sides and began representing CANDIE GOLDEN in her action for divorce against STONEY GOLDEN.

The final time CANDIE GOLDEN filed for divorce, she hired Mr. Bean because her attorney, Floyd Davis, had become a Judge. Mr. Bean ended his representation of STONEY GOLDEN and literally switched sides.

Under the ethical standards of any state, this behavior by an attorney is absolutely inexcusable. In Arizona, E.R. 1.9 would prevent this conduct without the permission of the former client. MR. GOLDEN tried repeatedly to have Mr. Bean removed from the case. Mr. Bean refused and the Judge in the divorce matter took no action to have Mr. Bean removed. A State Bar investigation was begun in Tennessee <u>after</u> the divorce was final.

Mr. Bean, however, died during the course of the Bar investigation before it was completed.

2. The Divorce Decree was invalid because Tennessee had no jurisdiction to render the Decree.

Significantly, there was no finding of jurisdiction in the Divorce Decree giving rise to the criminal proceedings in this case. Nor could there be a finding of jurisdiction because the Tennessee Court was completely without any jurisdiction whatsoever to render a divorce decree, let alone a custody decree when CANDIE GOLDEN had been there less than twenty-four hours. The Decree was void under Tennessee's own law, under the Federal Parental Kidnapping Act, 28 U.S.C.A. 1738(A) and Arizona certainly should not give full faith and credit to it.

A.R.S. 8-413 provides a launching point for determining when it will recognize out-of-state custody decrees:

> "The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter."

Even more important, however, is the application of the Federal Parental Kidnapping Prevention Act of 1980 (hereinafter referred to as the PKPA), 28 U.S.C. Section 1738(A).

The PKPA interprets all decrees of every state entered after December 28, 1980. Since the Tennessee Decree was entered after December 28, 1980, the Tennessee Court had a duty to enter its

Decree and custody order in accordance with the standards enacted in that Act.

That act establishes a policy of federal pre-emption in the area of custody jurisdiction:

> 1738(A) Full faith and credit given to child custody determinations
> (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection 9f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

Even Tennessee recognizes this:

> "As a federal jurisdictional statute, the PKPA establishes a policy of federal pre-emption in the area of custody jurisdiction. Consequently, under the Supremacy Clause of the United States Constitution, the PKPA takes precedence over either the Tennessee of New York Law and must be first consulted in determining jurisdiction in custody disputes." See Lodge 76, International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Commission, 427 U.S. 132, 138, 139, 96 S.Ct.

2548, 2552, 49 L.Ed.2d 396 (1976)... Voninski v. Voninski, 661 S.W.2d 872, 876 (Tenn.App. 1982).

28 U.S.C. Section 1738(A) provides that Arizona (and every other state) should enforce the custody decrees of other states if those decrees are rendered in accordance with the laws of the state rendering the order and the standards defined in the federal act are met:

> (c) A child custody custody determination made by a court of a State is consistent with the provisions of this section only if--
>
> (1) such court has jurisdiction under the law of such State; and
> (2) one of the following conditions is met:
> (A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live

in such State;

B.(i) It appears that no other state would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with this state other than mere physical presence in such State, and (II) there is available in this such state substantial evidence concerning the child's present or future care, protection, training and personal relationships.

C. The child is physically present in such state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse.

D. (i) It appears that no other state would have jurisdiction under subparagraph (A), (B), (C), or (E), or another state has declined to exercise jurisdiction on the ground that the state whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction; or

E. The court has continuing

> jurisdiction pursuant to subsection (d) of this section.

The PKPA defines "home state" as follows:

> 1738(A)(b)(4): "Home State: means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

Tennessee did not have jurisdiction under its own laws to render the initial custody Decree because the parties had been residing in Florida for the previous 10 months and Florida would have been the only acceptable jurisdiction.

In this judicial maze, the federal act directs one straight back to state law since the first of the jurisdictional prerequisites of the PKPA is that the state court have jurisdiction under its

own law.

An analysis of Tennessee statute and state law compels one conclusion: Franklin County was acting totally without jurisdiction when it accepted jurisdiction of the initial custody petition on May 22, 1982.

The facts constituting jurisdiction must be determined on May 22, 1982, the date of filing the Petition, not the date of rendition of the custody decree. Boyd v. Boyd, supra at page 738.

On May 22, 1982, CANDIE GOLDEN and CHASEY GOLDEN were within the State of Tennessee for less than one day and without the permission or knowledge of STONEY GOLDEN. All three had lived, worked and owned an interest in the family jewelry store in Florida. Such Florida residence had been maintained for 10 months prior to May 22, 1982. Under

these circumstances, Tennessee was compelled by its own law and statutes to decline jurisdiction.

To even file a Petition for Dissolution of Marriage, one must have been a resident of the State of Tennessee for more than six months prior to the filing of the Petition:

> 36-4-104. Residence requirements (a) A divorce may be granted for any of the aforesaid causes if the acts complained of were committed while the plaintiff was a bona fide resident of this state or if the acts complained of were committed out of this state and the plaintiff resided out of the state at the time, if the plaintiff or the defendant has resided in this state six (6) months next preceding the filing of the complaint.

With respect to child custody, Tennessee at the time of the filing of the underlying Petition, and now, had in effect its own version of the Uniform Child Custody Act.

Tennessee, by its own

interpretation of this statute, relied heavily on the "home state" of the child in determining jurisdiction over custody disputes. Tennessee defines "home state as follows:

> 36-6-202: (5) Home state means the state in which the child immediately preceding the time involved lived with his or her parents, a parent, or a person acting as parent, for at least six (6) consecutive months...

Tennessee itself acknowledges that Tennessee and the PKPA has established a clear preference for "home state" jurisdiction. See, Voninski, supra, 661 S.W.2d at page 877:

> "We believe that the language of the Tennessee Act, like that of the PKPA, establishes a preference for home state jurisdiction in interstate custody disputes." Voninski, supra at page 878.

Further, Tennessee also acknowledges that the PKPA does not contemplate that jurisdiction may exist

concurrently in a home state and a state with significant connections:

> The Act does not contemplate that jurisdiction may exist concurrently in a "home state" and a state with significant connections. If another state has satisfied the definition of "home state" set out at T.C.A. 36-1302(5), that state may assert jurisdiction to the exclusion of Tennessee even if Tennessee has significant connections and it is in the child's best interest that Tennessee courts assert such jurisdiction. Boyd v. Boyd, 653 S.W.2d 732 (Tenn. App. 1983) at page 737.

Indeed the Tennessee Act specifically allows the factors of the child and at least one contestant having a significant connection with the State and the best interests of the child to be significant only when no other state has jurisdiction. See the Tennessee Act, 36-6-203 (1)(2)(A)(B)(C)(D). In this respect it is like the PKPA.

The Tennessee Court in Finney v. Finney, 619 S.W.2d 130 (Tenn. App.1981)

made this clear when it stated:

> While the Tennessee Child Custody Act, as we have heretofore stated, is substantially similar to the Uniform Act, our legislature did not see fit to include language from the model act permitting jurisdiction when "it is in the best interests of the child that a court of this State assume jurisdiction because...the child and his parents, or the child and at least one contestant, have a significant connection with this State..." Uniform Child Custody Jurisdiction Act (U.L.A. Section 3(a)(2)(i)
>
> T.C.A. Section 36-1303 is the jurisdictional section of the Tennessee Child Custody Act, and, unlike the model Act, the best interest of the child is not a jurisdictional factor pursuant to T.C.A. Section 36-1303.
>
> While the child was physically present in Tennessee when the instant suit was filed, the proof is clear that Tennessee was not the child's "home state" when suit was filed." Finney, supra, 619 S.W.2d at pages 132-133.

Because of this, even the Tennessee courts acknowledge that the effect of the Tennessee Child Custody Act is to

severely limit the ability of Tennessee courts to make custody dispositions. See, Finney, supra at page 132.

Florida, in its version of the Uniform Child Custody Act embraces the doctrine of jurisdiction in the "home state". Section 61.1306 states as follows:

> 61.1308 Jurisdiction:
>
> (1) A court of this state which is competent to decide child custody has jurisdiction to make a child custody determination by initial or modification decree if,
>
> (a) This state:
>
> (1) Is the home state of the child at the time of commencement of the proceeding.
>
> Home state is defined as follows:
>
> 61.1306 (5) "Home state" means the state in which the child, immediately preceding the action involved, lived with his parents, a parent, or a person acting as parent for at least six consecutive months...
>
> Florida also has and had at the

time a six month residency requirement for filing for divorce.

In this case, CANDIE GOLDEN engaged in blatant forum shopping when she left Florida in the dead of the night without consent or knowledge of STONEY GOLDEN. In the stealth of the night she went to Alabama and removed the child from her in-laws--again without the knowledge of STONEY GOLDEN. She left her home, her domicile and the place of her livelihood to go back to a forum that she thought (and it most certainly was) very friendly to her.

This is the germ of the PKPA. It is exactly the situation for which the Act was designed. If ever the protection of the Act should be invoked, it should be here. Tennessee itself recognizes this over and over again in its appellate cases. Indeed its appellate courts

appear to constantly be correcting the actions of the local county judges, who for bias, or misunderstanding of the law or whatever other reason, fail to apply the strong and overriding principles of "home state jurisdiction."

Where a court renders a decree without comporting with federal law, it is not entitled to full faith and credit. See Mitchell v. Mitchell, 437 So.2d 22 (Ala. Civ. App. 1982) and all of the other cases recited in this portion of the Petition.

If the Divorce Decree which is the basis for the kidnapping charge is jurisdictionally void, then the arrest warrant is void. How can the arrest warrant substantively charge a crime when there is no valid custody order with which MR. GOLDEN interfered?

D. The arrest warrant does not

substantively charge a crime under Tennessee Laws.

The arrest warrant charges a violation of TCA 39-2602. There was no such section as TCA 39-2602 at the time that the arrest warrant was filed. It therefore does not substantively charge a crime and is therefore jurisdictionally defective.

E. In determining whether the arrest warrant is valid for purposes of extradition, this Court should also consider the web of other improprieties surrounding the issuance of the warrant.

Although counsel for Petitioner is mindful of the Court's duty not to try the guilt or innocence of MR. GOLDEN at this stage, it is difficult to decide the jurisdictional issues in a vacuum. The conflicts of interest have not occurred in isolation. The mistakes and problems

alleged with the arrest warrant are not 'mere technicalities'. The cumulative picture demonstrates one deliberate, calculated scheme to have MR. GOLDEN tried and effectively effectively hung without due process or any guarantee of his safety. If the arrest warrant is jurisdictionally void for any reason, our statutes and the federal constitutional principles implementing those statutes certainly permit this Court to say no to this injustice.

Conclusion

The arrest warrant issued from the State of Tennessee for STONEY GOLDEN is fatally defective in light of the fact that it was issued by a judge who formerly represented CANDIE GOLDEN in domestic proceedings wherein STONEY GOLDEN was the opposing party. Such action grossly violates STONEY GOLDEN's

rights of due process under the Fourth and Fourteenth Amendments of the United States Constitution and the concomitant requirement that a warrant be issued by a detached and neutral magistrate.

Moreover, the assault on Petitioner's fundamental Constitutional rights has been exacerbated by the fact that the district attorney who is prosecuting the case against him, also happens to be in private law practice with his brother, the latter of whom represents CANDIE GOLDEN.

Further, since MRS. GOLDEN was only present in the State of Tennessee for a period of hours before the Complaint for Divorce was filed, the six month jurisdictional requirement was not met. For such reason the Decree which determined custody and, upon which the subsequent criminal proceedings against

STONEY GOLDEN depended was null and void. In addition, the arrest warrant could not substantively charge the crime it did since the section of law allegedly violated by MR. GOLDEN in the warrant was not in effect at the time of the warrant's issuance.

Not only for these reasons should this Court issue a Writ of Certiorari to review the decision of the Arizona Supreme Court, but also to defeat the "backwoods justice" which has prevailed thus far.

Respectfully submitted,

Armand Salese*
Kathleen McCarthy
Salese & McCarthy, P.C.
124 W. Cushing Street
Tucson, Arizona 85701
(602) 623-0341
Attorneys for Petitioner

*Counsel of Record

APPENDIX A

SUPREME COURT

October 8, 1986

RE: STONEY GENE GOLDEN vs. CLARENCE W. DUPNIK
Supreme Court No. CV-86-0461-PR
Court of Appeals No. 2 CA-CIV 5544
Pima County No. H-1020

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 7, 1986, in regard to the above-referenced cause:

ORDERED: Petition for Review - DENIED

Record returned to Court of Appeals, Division Two, Tucson, this 8th day of October, 1986.

DAVID R. COLE, Clerk

TO:

Kathleen A. McCarthy, Esq.
Stephen D. Neely, Pima County Attorney - Attn: Paul E. Tang
Joyce Goldsmith, Clerk, Court of Appeals, Division Two

des

APPENDIX B

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

2 CA-CIV 5544
DEPARTMENT A

PIMA County
Superior Court
Cause No. H-1020

STONEY GENE GOLDEN	)	
	)	
Petitioner/Appellant,	)	
	)	
and	)	
	)	
CLARENCE W. DUPNIK, Sheriff of Pima County, Arizona,	)	ORDER
	)	
Respondent/Appellee,	)	
	)	
and	)	
	)	
THE STATE OF ARIZONA,	)	
	)	
Real Party in Interest	)	

The above-entitled matter was duly submitted to the Court. The Court has this day rendered its OPINION.

IT IS ORDERED that the OPINION be filed by the Clerk.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the OPINION be sent to each party appearing herein or the attorney for such party and to the Honorable Thomas Meehan, Judge Pima County Superior Court.

DATED this 22nd day of May, 1985.

James D. Hathaway
Chief Judge

The foregoing directives were complied with May 22, 1986 by mailing the required to:

Kathleen A. McCarthy
124 West Cushing Street
Tucson, Arizona 85701

Stephen D. Neely, Pima County Attorney
Paul Tang
900 Court Building
100 West Congress
Tucson, Arizona 85701

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

STONEY GENE GOLDEN, Petitioner/Appellant, v. CLARENCE W. DUPNIK, Sheriff of Pima County, Arizona, Respondent/Appellee. and THE STATE OF ARIZONA, Real Party in Interest,	)	2CA-CIV5544 DEPARTMENT A OPINION

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. H-1020

Honorable Thomas Meehan, Judge

AFFIRMED

Kathleen A. McCarthy Tucson

Attorney for Petitioner/Appellant

Stephen D. Neely, Pima County Attorney
by Paul Tang Tucson

Attorneys for Real Party in Interest

H A T H A W A Y, Chief Judge

Appellant contests the trial court's denial of his writ of habeas corpus. On May 21, 1982, Candie Golden, then-wife of appellant Stoney Golden, filed for divorce and sought custody of their minor child in Tennessee. The parties were divorced on August 20, 1982. Appellant claims the Tennessee court did not have jurisdiction under its own laws to grant the divorce.

Alleging that the child had been abused, appellant left Tennessee with the child in January 1983, in violation of the custody order. He arrived in Arizona approximately 1-1/2 years ago, where he has remained since that time. On January 5, 1983, relying solely upon the affidavit of appellant's ex-wife, Judge Floyd Don Davis issued a warrant for appellant's arrest for kidnapping. In May 1983,

appellant was indicted by a Tennessee grand jury on the same kidnapping charge. On May 4, 1985, appellant was discovered in Arizona by his ex-wife and the child was placed in child protective service custody here. On May 7, 1985, appellant obtained a temporary restraining order allowing the child to remain in Arizona. In violation of that order, Candie Golden fled the state with the child. In domestic proceedings below, appellant was denied custody on jurisdictional grounds. That ruling is currently pending in another appeal.

On May 4, 1985, appellant was arrested by Arizona authorities and on June 28, 1985 the Governor of Tennessee sought extradition of appellant on the kidnapping charges. The Governor of

Arizona issued an extradition warrant and appellant was jailed on August 9, 1985, pending extradition to Tennessee. On August 30, 1985, a hearing was held on appellant's petition for a writ of habeas corpus. The trial court denied the writ. A stay of execution of the warrant was obtained on September 3, 1985, pending this appeal.

Appellant raises five issues on appeal: (1) the arrest warrant is jurisdictionally fatally defective and was issued by a judge who has a personal interest in the outcome of the proceedings thereby violating appellant's fundamental federal constitutional rights on extradition; (2) the arrest warrant was jurisdictionally fatally defective in that it is being prosecuted by a county

attorney who has a direct and personal interest in the outcome thereby violating appellant's fundamental constitutional rights; (3) the arrest warrant was jurisdictionally fatally defective in that the supporting divorce decree and custody order upon which the crime was alleged are void; (4) the arrest warrant does not substantively charge a crime under Tennessee law; (5) this court should consider the web of other improprieties surrounding the issuance of the warrant.

I. THE ARREST WARRANT

The Extradition Clause of the United States Constitution provides:

> "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled,

> be delivered up, to be removed to the State having Jurisdiction of the crime." Art. IV, Sec. 2

To implement the above provision of the constitution, the Congress has enacted 18 U.S.C. Section 3181, et seq. and many states, including Arizona and Tennessee, have adopted the Uniform Criminal Extradition Act. See A.R.S. Section 13-3841, et seq and TCA Sections 40-9-101 through 40-9-130. Pursuant to the Act, the governor of the demanding state (in this case Tennessee) demands extradition from the governor of the asylum state (in this case Arizona). A.R.S. Section 13-3843. The demand must be in writing and accompanied by the indictment or information or by an affidavit made before a magistrate. The governor of the asylum

state may investigate the charges and if he decides the demand should be complied with he issues a warrant. A.R.S. Sections 13-3846 and 13-3847.

The Supreme Court has held that once the governor of a state grants extradition, such grant becomes prima facie evidence that the constitutional and statutory requirements for extradition have been met and this court has but a limited review. We can do no more than decide whether (a) the extradition documents on their face are in order; (b) the petitioner has been charged with a crime in the demanding state; (c) the petitioner is the person named in the request for extradition, and (d) the petitioner is a fugitive. Michigan v. Doran, 439 U.S. 282, 99 S.Ct. 530, 58

L.Ed.2d 521 (1978). There is no doubt that the above criteria have been met in the present case.

Appellant argues, however, that the issue whether a neutral magistrate signed the original arrest order is also open for review. The Doran case substantiates this view. In Michigan v. Doran, supra, the court stated:

> "In short, when a neutral judicial officer of the demanding state has determined that probable cause exists, the courts of the asylum state are without power to review the determination." 439 U.S. at 289, 99 S.Ct. at 536.

That statement in Doran has been interpreted to allow the reviewing state courts to determine whether there has been a finding of probable cause by a neutral

judicial officer. The inquiry may be made in addition to the four criteria listed above. Zambito v. Blair, 610 F.2d 1192 (4th Cir. 1979); United States v. Pennsylvania State Police, 548 F.Supp. 9 (E.D. Pa. 1982). See also, Crew v. State of Connecticut, 40 Conn.Supp. 179, 486 A.2d 664 (1984); Application of O'Riordan, 7 Kan.App. 460, 643 P.2d 1147 (1982).

In this case, appellant has provided conclusively that the original arrest warrant was not signed by a neutral magistrate. He has presented evidence that the same magistrate who signed the arrest order also represented appellant's ex-wife in 1981 and 1982 in two divorce actions against appellant. Those circumstances clearly violate the neutral

judicial officer requirement. See Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

Unfortunately for appellant, the arrest warrant, though void in this case, was also superfluous. Both A.R.S. Section 13-3843(B) and 18 U.S.C. Section 3182, require only that an indictment or affidavit made before a magistrate accompany the demand for extradition. In this case, appellant was indicted before a grand jury a number of months following the issuance of the arrest warrant. Since all that was needed was the indictment, the arrest warrant is irrelevant. See Bruzaud v. Matthews, 93 App.D.C. 47, 207 F.2d 25 (1953). We are not permitted to examine whether the grand jury had

sufficient probable cause to issue the indictment. See Michigan v. Doran, supra. Therefore, the extradition papers were in order.

II. PROSECUTORIAL BIAS

Appellant alleges that the prosecutor in Tennessee is biased and has an interest in this case. It has been specifically held that on issuance of a governor's warrant for extradition, the motives of a prosecutor cannot be considered. McDonald v. Burrows, 731 F.2d 294 (5th Cir. 1984); see also, Michigan v. Doran, supra, and Pacileo v. Walker, 449 U.S. 86, 101 S.Ct. 308, 66 L.Ed.2d 304, reh. den. 450 U.S. 960, 101 S.Ct. 1421, 67 L.Ed.2d 385 (1980).

III. JURISDICTIONALLY FATAL INDICTMENT

Appellant argues that the divorce and custody decree entered in Tennessee was void and therefore he could not have kidnapped his son in violation of the void decree. His argument is premised on the fact that his wife did not meet the six month residency requirement of Tennessee law for divorce. See TCA Section 36-4-104. This is not the proper forum in which to bring that argument. The proper forum is the State of Tennessee. We are not permitted in this review to consider the guilt or innocence of appellant. Nor may we consider a collateral attack on the decree. See Michigan v. Doran, supra.

IV. WARRANT CHARGING WRONG CRIME

Appellant argues that his arrest

warrant charged a violation of TCA Section 39-2602, a statute that was not in existence at the time of his indictment. Appellant does not argue that no such kidnapping law exists in Tennessee. The indictment and arrest warrant both put appellant on notice of the charges against him.

V. OTHER IMPROPRIETIES

Appellant argues that this court should consider other improprieties that have occurred in the State of Tennessee. There is case law to the effect that this court upon issuance of a governor's warrant for extradition may inquire into malice of the prosecutor and charging parties. See Annot. 94 A.L.R. 1493 (1935). In light of the more recent Doran

case, however, the review of this court is strictly limited and a review of such motives is inappropriate. See Ex parte Mcdonald, 631 S.W.2d 222 (Tex.Civ.App. 1982).

Affirmed.

JAMES D. HATHAWAY, Chief Judge

CONCURRING:

Lawrence Howard,
Presiding Judge

Lloyd Fernandez, Judge

(2)

86-1244

Supreme Court, U.S.
FILED
FEB 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STONEY GENE GOLDEN,

Petitioner,

vs.

CLARENCE W. DUPNIK, SHERIFF
of Pima County, Arizona,

Respondent,

and

THE STATE OF ARIZONA,

Real Party in Interest.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FROM THE ARIZONA SUPREME COURT

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

PAUL E. TANG*
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177 North Church Avenue
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. _____

STONEY GENE GOLDEN,

Petitioner,

vs.

CLARENCE W. DUPNIK, SHERIFF
of Pima County, Arizona,

Respondent,

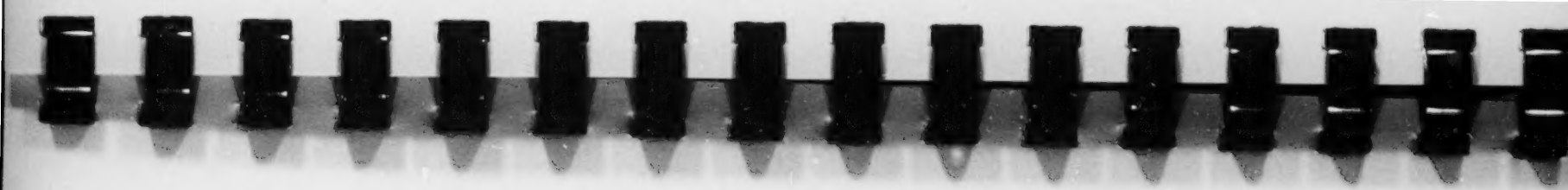
and

THE STATE OF ARIZONA,

Real Party in Interest.

OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI
FROM THE ARIZONA SUPREME COURT

The Pima County Attorney, on behalf of the State of Arizona, requests that this Court deny STONEY GENE GOLDEN'S



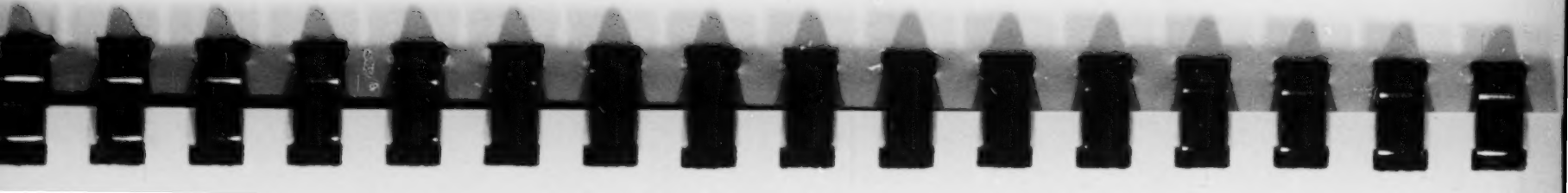
petition for a writ of certiorari reviewing the judgment of the Arizona Court of Appeals, Division 2, Department A, in this case.

Opinion Below

The opinion of the Arizona Court of Appeals, Division 2 is reported as Golden v. Dupnik and Arizona, ____ Ariz. ____, ___ P.2d ____ (CA-Civ. 5544 filed May 22, 1986). On July 2, 1986, the Court of Appeals for the State of Arizona, Division 2, Department A, denied Petitioner's Motion for Reconsideration. A Petition for Review, filed July 17, 1986, was denied by order of the Arizona Supreme Court on October 7, 1986.

Jurisdiction

The decision of Arizona Court of Appeals, Division 2, Department A, does not



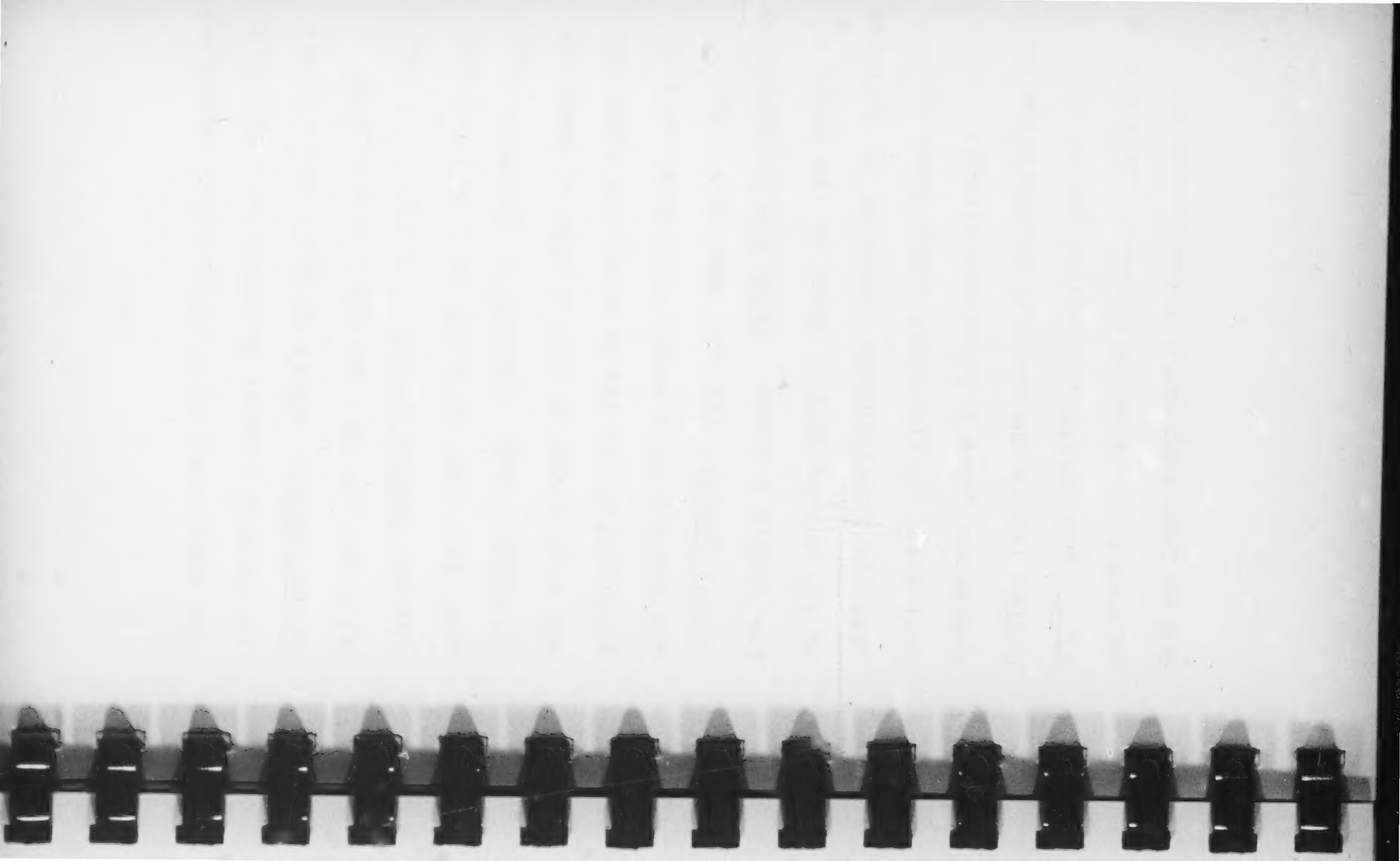
warrant review, and a grant of certiorari would constitute a deviation from the guidelines provided by 28 U.S.C., Rules of the Supreme Court, Rule: 17.1: "A review on a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore." Under Rule 17.1 (b) and (c) the following are considerations governing review on certiorari:

> "When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort..."
>
> When a state court...has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in such a way in conflict with the applicable decisions of this court."

The considerations enumerated in Rule 17.1 (b) and (c) are not encompassed in the decision of the Court of Appeals of the State of Arizona, Division 2, Department A, cited as 2 CA-Civ 5544 (filed May 22, 1986) since (1) no important question of federal law has been decided by the Arizona court, and (2) Arizona's ruling is in accord with this Court's decisions regarding the role of the asylum state in extradition proceedings.

There was no important federal question put before the Arizona court that induced the court to decide a federal issue. The Arizona court merely determined that the issues raised by the Petitioner were beyond the scope of the inquiry permitted under the laws of extradition. The Petitioner failed to "specially set up or claim" any protection under the United

States Constitution, a prerequisite to raising a claim on certiorari. 28 U.S.C. § 1257. The phrase "specially set up or claim" limits the Court's jurisdiction to instances where a party has clearly indicated, in the state court proceeding, that the Constitution, treatise or statutes of the United States serve as the basis of the rights claimed. Oxley Stave Company v. Butler County, 166 U.S. 648, 655 (1897). The Petitioner's vague references to the Constitution in the proceedings below are not sufficient to draw a federal question in issue. See: Herndon v. Georgia, 295 U.S. 441, 442, 55 S.Ct. 791, 79 L.Ed 1530 (1935); Chapin v. Fye, 179 U.S. 127, 129, 21 S.Ct. 71, 45 L.Ed 119 (1900); Oxley Stave Company, supra at 655. The failure to raise a federal question in a petition for certiorari is a fatal flaw. Therefore,



the Petitioner's request for certiorari should be denied.

Assuming arguendo that the Petitioner's references to his rights under the Constitution are sufficient to present a federal question, no "special or important reasons" are presented that would warrant the exercise of the Court's discretion. "Special and important reasons imply a reach to a problem beyond the academic or episodic." Rice v. Sioux City Cemetery, 349 U.S. 70, 74, 75 S.Ct. 614, 99 L.Ed 897 (1954). The question cannot be limited to the interest of the particular litigants. Id. In this case, the Petitioner is merely requesting the Court to rule on the validity of his divorce decree, as it serves for the basis of the custody violation charged in the indictment. This question does not reach

Constitutional dimensions, but simply asks the Court to act as a fact-finder in this particular instance. No court has ruled on the validity of the divorce decree. The validity of the decree is collateral to the sufficiency of the indictment pursuant to the laws of extradition. It would be improper for the Court to take jurisdiction in this case when the sole issue presented is the Petitioner's attempt to controvert the criminality of the offense charged by collaterally attacking his divorce decree.

Certiorari should also be denied since the Arizona decision is not in conflict with the renderings of other states or of this Court. The opinion, as authored by the Honorable James D. Hathaway, relies on this Court's decision in Michigan v. Doran, 439 U.S. 282, 99 S.Ct. 530, 58 1.Ed.2d 521 (1978). The

decision follows the dictates of this Court as enumerated in that opinion. In Doran the Court defined the latitude afforded the asylum state in assessing the propriety of the extradition papers from the demanding state. Therefore, the issues raised by the Petitioner have been settled by the Court and need not be readdressed.

QUESTION PRESENTED

1. Considering the limited scope of inquiry afforded asylum states in extradition proceedings, can the Courts of Arizona inquire into the validity of the Petitioner's Tennessee divorce decree to determine if there was a factual basis for the issuance of the indictment?

STATEMENT OF THE CASE

The statement of facts as set forth by the Arizona Court of Appeals in Golden v. Dupnik and State, 2-CA-Civ. 5544, p. 1-3 (filed May 22, 1986) is accurate. The facts set forth in the Petition for

Certiorari, however, are inaccurate in the following respects: Petitioner omits any mention in his statement of the case that he was indicted by a Tennessee Grand Jury on a charge of child abduction on May 3, 1983. (See Exhibit "A".) Despite the alleged improprieties contained in the warrant issued by Judge Floyd Don Davis, who previously represented Petitioner's ex-wife in 1981 and 1982 in two divorce actions against the Petitioner, the indictment, and not the warrant served as the foundation for the extradition papers demanding Petitioner's return to Tennessee.

Petitioner claims that the Franklin County, Tennessee Chancery Court did not have jurisdiction under its own laws to grant the divorce between himself and Candi Golden, his ex-wife. However, although in this case not a part of the record, in his

divorce action the Petitioner filed pleadings which admitted the Golden's were residents of Tennessee, and that he and his wife were residing in Florida only temporarily. The Petitioner's answer and counter complaint for his divorce action states as follows:

> "2. Defendant admits that the parties were married in Coffee County, Tennessee on September 12, 1979, and that they are residents of the State of Tennessee. Defendant and plaintiff were temporarily residing in Panama City, Florida..." (Emphasis added.) (See Answer and Counter-complaint in Golden v. Golden, No. 10029, Chancery Court of Franklin County, Tennessee, attached as Exhibit "B".)

Thus, by his own admission, Petitioner affirmatively pleaded his residency in the State of Tennessee and admitted that his stay in Florida was only temporary.

Finally, it is critical to note that in this case the Petitioner before the trial court stipulated that the Governor's papers of the States of Arizona and Tennessee were in order. (Transcript of proceedings (TP) 8/30/85 pp. 26A, 27A, 60A, 61A and 63A attached as Exhibit "C".)

REASONS FOR DENYING THE WRIT

1. The indictment returned by a Grand Jury serves as the basis for this extradition; therefore, the impropriety that may be attached to the procurement of the arrest warrant need not be addressed in the extradition proceeding.

Once a governor of an asylum state grants extradition, that grant is prima facie evidence that the constitutional and statutory requirements have been met by the demanding state. Bassing v. Cady, 208 U.S. 386, 28 S.Ct. 392, 52 L.Ed 540 (1908). In

Michigan v. Doran, supra, the Court defined the limits of judicial inquiry after extradition has been ordered. The asylum court is only permitted to consider whether (a) the extradition documents on their face are in order; (b) the petitioner has been charged with a crime in the demanding state; (c) the petitioner is the person named in the extradition, and (d) the petitioner is a fugitive. Id. at 289. The Petitioner admitted and stipulated to all of these factors at the trial level. (TP 8/30/85 attached as Exhibit "C".) In addition to these considerations, the court may also inquire into whether a neutral magistrate issued the original arrest warrant. Id. Zambito v. Blair, 610 F.2d 1192 (4th Cir. 1979).

In the instant case, although there are substantial questions as to the

neutrality of the magistrate who issued the arrest warrant, the arrest warrant does not serve as the basis for the extradition proceedings. The Petitioner was indicted by a Tennessee Grand Jury on May 3, 1983. (See Exhibit "A"). Since 18 U.S.C. § 3182 and its Arizona counterpart A.R.S. § 13-3843 (b) require a warrant by affidavit sworn before a neutral magistrate or an indictment by grand jury, the arrest warrant is incidental to the extradition. Bruzaus v. Matthews, 207 F.2d 25 (D.C. App. 1953). The grand jury made a finding of probable cause that cannot be reviewed by the court. U.S. v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974). In Michigan v. Doran, supra at 290, the Court stated:

> "We hold that once the governor of the asylum state has acted on the requisition for

> extradition based on the demanding state's judicial determination that probable cause existed, no further judicial inquiry may be had on that issue by the asylum state."

The extradition papers were approved by the governor, and the Petitioner has not presented any challenge to rebut the prima facie evidence that these papers were in order.

> 2. When issuing a warrant for extradition, the motives of the prosecutor in the demanding state may not be considered.

It is improper for the Governor of Arizona or its courts to scrutinize the motives of the prosecutor in Tennessee. McDonald v. Burrows, 731 F.2d. 294, 296, cert denied, 469 U.S. 852 (1984). Although there have been cases that have permitted such an inquiry, these holdings were prior to the establishment of the limits of

judicial inquiry developed in Michigan v. Doran, supra. Since the motives of the prosecutor are not listed as an acceptable avenue of inquiry in the Michigan v. Doran decision, courts have held that, by omission, the motives of the prosecutor are not open to the scrutiny of the asylum state. McDonald v. Burrows, supra; Ex Parte McDonald, 631 S.W.2d 222 (Tex. App. 1982). To permit such an inquiry would substantially alter the judicial effectiveness of extradition proceedings in requiring courts of asylum state to make impermissible non-ministerial examinations into the jurisprudence of demanding states.

3. The validity of the Petitioner's divorce decree is collateral to the extradition proceedings and beyond the scope of inquiry for the Arizona courts.

The Petitioner claims that the

Tennessee court lacked jurisdiction to issue his divorce decree, stating he and his wife were residents of Florida at the time of filing. Although not a part of the record,[1] the Petitioner filed pleadings in his divorce action in which he admitted he was a resident of Tennessee, and that he and his wife were residing in Florida only temporarily. The Petitioner now suggests that the indictment presented to the

. . . .

---

[1] The State of Arizona did not offer Answer and Counter-complaint in Golden vs. Golden, No. 10,029, Chancery Court of Franklin County, Tennessee, currently marked as Exhibit "B", into evidence in the lower court proceedings since the information contained therein was irrelevant to the permissible avenue of inquiry for the asylum state as established in Michigan v. Doran, supra.

Governor of Arizona fails to substantially charge a crime since no valid custody order existed at the time the Petitioner took his son. Without regard to the merits of the Petitioner's jurisdictional claim, this collateral attack on the divorce decree is not within the scope of inquiry afforded the Arizona courts for the purpose of the extradition proceedings.

The Tennessee indictment states:

> "Stoney Gene Golden heretofore, to-wit, on the 2nd day of January, 1983, and before the finding of this indictment in the County aforesaid did unlawfully, feloniously take away Chasey Gene Golden, a child three years of age, with intent to detain and conceal such child from its mother, Candi Taylor Reeves, being the person having lawful custody of said child, all in violation of TCA 39-2602." (See: Exhibit "A".)

The allegation that Candi Taylor Reeves,

Petitioner's ex-wife, had lawful custody of Chasey Golden at the time the Petitioner removed the boy from the state is a question of fact relating to the validity of the divorce decree. If the Petitioner is correct, and Tennessee had no jurisdiction to issue the divorce decree, then he has an adequate defense to present to the courts of the State of Tennessee. The integrity of the divorce decree is not a question of law affecting the sufficiency of the indictment as a charging document and cannot be considered by Arizona courts as a basis for denying the demand for extradition.

In Michigan v. Doran, supra, the Court enumerated the judicial limits of inquiry permitted by the asylum state. These permissible avenues of inquiry are well-established in the history of the laws

of extradition. Roberts v. Reilly, 116 U.S 80 (1885); Commonwealth of Kentucky v. Dennison, 65 U.S. 66, 16 1.Ed 717 (1860). The purpose of extradition laws are to assure that a fugitive from justice will be promptly returned to the demanding state to face charges. Biddinger v. Commissioner, 245 U.S. 128, 132-133, 38 S.Ct. 41, 62 L.Ed 193 (1917). The role of the governor of the asylum state is purely ministerial in nature. Commonwealth of Kentucky v. Dennison, supra at 107. To allow the Governor of Arizona or the Arizona courts to rule on the validity of the Petitioner's divorce decree as issued by the State of Tennessee could involve the asylum state in a factual examination of such proportions that the purpose of the extradition provision would be thwarted.

In recognition of the purpose of

extradition laws, the Court has limited the attack on an indictment to a demonstration that the document does not substantially charge a crime. Pierce v. Creecy, 210 U.S. 387, 401, 28 S.Ct. 714, 52 1.Ed 1113 (1907). In Pierce, the Court drew a distinction between attacking the indictment as a pleading, an improper challenge in an extradition proceeding, and attacking the indictment by showing it does not charge a crime. In order to meet the requirements of the latter, "there must be objections which reach deeper into the indictment than those that would be good against it in the court where it is pending." Id. The Court stated:

> "The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the

> fugitive has been in fact, however inartificially (sic) charged with a crime in the state from which he has fled." Id.

The Court continues:

> "...For if all the criticisms of the indictment should be approved, and they leave untouched in the pleading enough to show that the petitioner was charged with a crime in the broad and practical sense in which those words ought to be understood, the condition prescribed by the Constitution has been performed." Id.

The facts of Pierce are analogous to the case at bar. Pierce was charged with false swearing. An element of the crime of false swearing was that the document purported to be false must have been made voluntarily and not within the course of a judicial proceeding. At his extradition proceeding, Pierce claimed the document was made during a judicial proceeding. Therefore, the

indictment did not substantially charge a crime. Pierce also claimed that his statements in the document were opinion, not facts as required by the statute charged. The Court held that it could not inquire into the fugitive's allegations since they presented mixed questions of law and fact. Id. at 403. Just as it is improper for the Court in Pierce to determine whether the document in question was sworn out in the course of a judicial proceeding, the Arizona court is unauthorized to consider whether the Petitioner took his son in violation of a lawful custody order. Such a determination would require Arizona to conduct an investigation into matters collateral to the extradition proceedings beyond the limits authorized by the Court in Michigan v. Doran, supra.

This Court has consistently declined to consider collateral issues similar to the one presented by the Petitioner as grounds for attacking the indictment in the extradition stage. In Roberts v. Reilly, supra, Roberts claimed that a larceny indictment was invalid because the company alleged to be the owner of the property which served as the element of the charge was incapable at law of such ownership. The Court stated that this issue "...is not a matter of law arising upon the face of the indictment, but can arise only at the trial upon the evidence, if the question should be made. The averment in the indictment is the allegation of fact which does not seem to be impossible in law, and is, therefore, traversable." Id. at 96.

Here, Petitioner is simply raising questions of fact, not scrutinizing the

validity of the indictment on its face. The courts of Arizona are not authorized to act as fact finders in extradition proceedings and cannot rule on the validity of the Petitioner's Tennessee divorce decree. The fact that Petitioner admitted that he was a resident of Tennessee at the time of filing is illustrative of the necessity of fact finding on this issue. Arizona does not have the jurisdiction to make this determination. It is a question of fact and law for the courts of Tennessee. Such a claim does not negate the sufficiency of the indictment as a charging document. All that is required "is that the indictment, whether good or bad as a pleading, describes every element of the crime charged." Pierce v. Creecy, supra at 404. This is the extent to which the courts of Arizona can scrutinize the

integrity of the indictment.

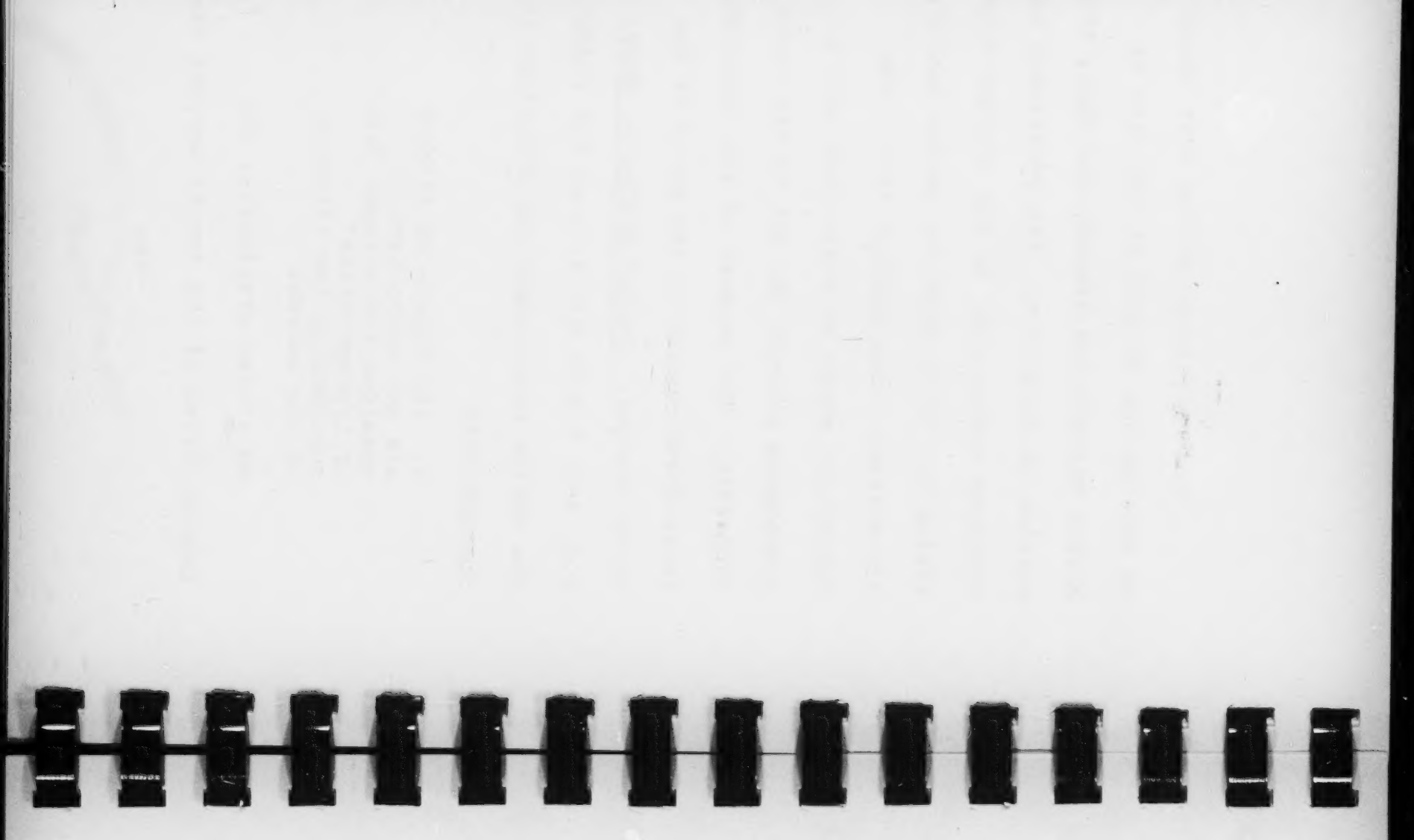
When viewed in this light, it is evident that the Petitioner's argument presented to this Court is merely that he is not guilty of the crime charged in the indictment since supposedly no valid custody order existed at the time he took his son. The Petitioner is not entitled to a determination of guilt or innocence in an extradition proceeding. Michigan v. Doran, supra at 288; In Re Strauss, 197 U.S. 324, 125 S.Ct. 535, 49 L.Ed 774 (1905). The Petitioner has not succeeded in attacking the indictment on the basis that it does not adequately charge a crime. Therefore, he should be required to state his defense to the courts of the State of Tennessee.

4. The documents in support of the Governor's Warrant provided the Petitioner with adequate notice of the charges against him.

The Petitioner claims that there was no section TCA 39-2602 at the time of arrest warrant was issued; and thus, the warrant is defective. The Petitioner had adequate notice that he was charged with taking his child from the lawful custody of his mother. (See Exhibit "A"). The Petitioner makes no claim that such a kidnapping statute was not on the books in Tennessee. The purpose of the indictment is to serve notice to the party of the crime charged. United States v. Hess, 124 U.S. 483, 8 S.Ct 571 31 L.Ed 516 (1888). The notice requirement was satisfied in the instant case.

5. The Courts of Arizona are not authorized to consider the alleged "web of improprieties" surrounding the issuance of the warrant.

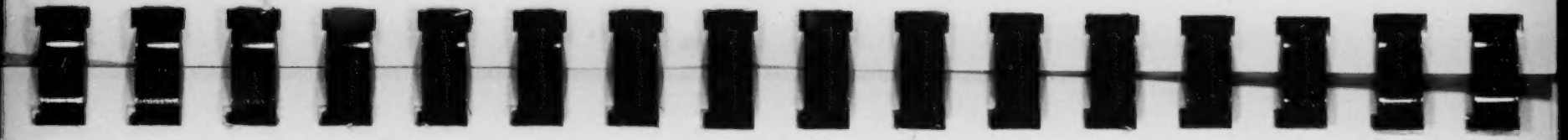
As stated previously, the improprieties of the arrest warrant are



incidental to this proceeding due to the issuance of the indictment on May 3, 1983. Arizona is not the proper forum to litigate the allegations of impropriety raised by the Petitioner. The dictates of Michigan v. Doran, supra, define the permissible scope of inquiry for the asylum state in extradition proceedings. The review of the Arizona courts is strictly limited by this decision and the claims of Petitioner fall outside the proper boundaries. The Petitioner should be required to initiate his claims in the State of Tennessee, where all the parties may be heard, all the pertinent testimony will be readily available, and where the court has jurisdiction to grant relief to the Petitioner if necessary.

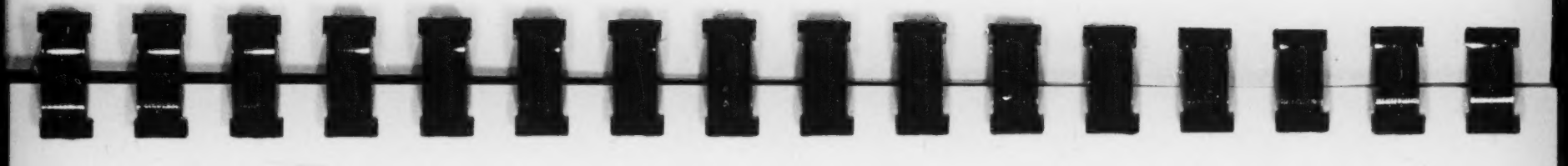
Conclusion

Since the Petitioner failed to



adequately raise a federal question in state court, and since Arizona is not the proper forum for consideration of the Petitioner's claims, the State of Arizona respectfully requests this Court to deny the Petition for Certiorari.

The Tennessee arrest warrant is an irrelevant consideration to Petitioner's extradition as a valid grand jury indictment exists and serves as the basis for Tennessee's request to extradite Petitioner. Petitioner's remaining claims do not challenge the sufficiency of the indictment but instead, address aspects relating to guilt or innocence. Petitioner's challenges should therefore be raised in the courts of the demanding state, Tennessee, rather than in the courts of Arizona as the asylum state's courts are limited to performing only ministerial



duties in extradition proceedings. The State of Arizona thus requests this court to deny GOLDEN'S petition for writ of certiorari.

Respectfully submitted this 5th day of February, 1987.

Paul E. Tang
Deputy County Attorney
177 N. Church Ave., Suite 300
Tucson, Arizona 85701
Tel: (602) 622-6621
Attorneys for Respondent
*Counsel for Record

STATE OF TENNESSEE CIRCUIT COURT

FRANKLIN COUNTY MAY Term 1983

The Grand Jurors for the State of Tennessee, duly elected, impaneled, sworn, and charged to inquire in and for the body of the County and State aforesaid, upon their oaths present: That STONEY GENE GOLDEN heretofore, to-wit, on the 2nd day of January, 1983, and before the finding of this indictment in the County aforesaid did unlawfully, feloniously take away Chasey Gene Golden, a child three years of age, with intent to detain and conceal such child from its mother, Candi Taylor Reeves, being the person having lawful custody of said child, all in violation of TCA 39-2602 against the peace and dignity of the State.

/s/
J. William Pope
Attorney General

Exhibit "A"

TO HIS EXCELLENCY, THE GOVERNOR

OF THE STATE OF TENNESSEE

I have the honor to request that you issue a requisition to the Governor of the State of Arizona for the apprehension and rendition of fugitive, Stoney Gene Golden. Said fugitive stands indicted for the offense of Child Abduction in violation of T.C.A. 39-2602 by the Grand Jury of Franklin County, said offense committed while present in Franklin County, Tennessee in January, 1983, as will more fully appear by reference to the certified copies of the Indictment attached hereto and made a part of this petition.

Since the commission of the offense, the fugitive has fled from the jurisdiction of the State of Tennessee with a view toward avoiding prosecution and is now, as your petitioner believes in the custody of the Pima County Sheriff's Department,

Tucson, Arizona 85700, which information was received by Sheriff Mike Kirk of Franklin County, Winchester, Tennessee from Mary Mandez, Pima County Sheriff's Dept., Warrant Division, P. O. Box 190, Tucson, Arizona 85700.

In my opinion the facts stated in this application are true, and I believe that the prosecution of said fugitive will result in a conviction of the crime charged. I nominate Mike Kirk, Sheriff of Franklin County, Winchester, Tennessee 37398, who has no private interest in the proposed arrest, as a proper person to be appointed and commissioned by you as the Agent of The State of Tennessee to receive said fugitive when apprehended, and bring said fugitive to this State. A guard is requested.

I hereby certify that in my opinion the ends of justice require the arrest and

return of said fugitive to Tennessee and that extradition is not sought for the purpose of collecting a debt, or enforcing civil remedy, or to answer any private end whatever.

I, J. William Pope, Jr., being duly sworn on my oath say that the facts stated in the foregoing application are true to the best of my knowledge and belief.

/s/
J. WILLIAM POPE, JR.
DISTRICT ATTORNEY GENERAL
12th JUDICIAL DISTRICT
STATE OF TENNESSEE

Signed and sworn to before me this ____ day of _____, 1987.

/s/
W. B. BOSWELL
CIRCUIT COURT CLERK
FRANKLIN COUNTY

TENNESSEE
EXECUTIVE CHAMBER

To His Excellency, the Governor of Arizona

Whereas, it appears by the annexed application and copies of indictment

which I certify are authentic and duly authenticated in accordance with the laws of the State of Tennessee, that under the laws of this State Stoney Gene Golden

stands charged with the crime of child abduction

committed in this State, and it has been represented and is satisfactorily shown to me that the accused was present in this State at the time of the commission of said crime and thereafter fled from the justice of this State, and has taken refuge and is now to be found in the State of Arizona.

Now, Therefore, pursuant to the provisions of the Constitution and the laws of the United States and the laws of the State of Tennessee and the laws of the State of Arizona, in such case made and provided,

I Do Hereby Respectfully Demand that said Stoney Gene Golden fugitive from justice be arrested and secured and delivered to Sheriff Mike Kirk and a guard who ~~is~~ (are) hereby authorized to receive and convey and transport said fugitive to this State, here to be dealt with according to law.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, at the State Capitol in Nashville, on this 28th day of June A.D. 19 85

Lamar Alexander
GOVERNOR

Gentry Crowell
SECRETARY OF STATE

TENNESSEE
EXECUTIVE CHAMBER

To all to whom these presents shall come—Greeting:

Whereas, it has been made to appear that Stoney Gene Golden

(hereinafter referred to as fugitive) of our County of Franklin stands charged with the crime of child abduction

And it has been represented that said fugitive fled from justice of this State and has taken refuge within the State of Arizona,

And Whereas, Pursuant to the provisions of the Constitution of the United States, and an Act of Congress, passed the twelfth day of February, One Thousand Seven Hundred and Ninety-three, application has been duly made to his Excellency Governor of Arizona for the delivery of said fugitive from justice.

Now, Therefore, in pursuance of the power vested in me by law, I have appointed and by these presents do appoint and commission Sheriff Mike Kirk and a guard Agent(s on the part of this State, for the purpose of bringing the said fugitive into this State having jurisdiction of the crime aforesaid, whenever the Governor of the said State of Arizona shall cause said fugitive to be delivered up agreeably to the requisition aforesaid.

These Are, Therefore, To request and require all persons to permit the said Sheriff Mike Kirk and a guard to receive and secure the said Stoney Gene Golden and bring the fugitive unmolested into this State, having jurisdiction of said crime-th Agent(s) peacefully and lawfully behaving.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, at the State Capitol in Nashville, on this 28th day of June A.D. 19 85

Lamar Alexander
GOVERNOR

Gentry Crowell
SECRETARY OF STATE

AC

IN THE CHANCERY COURT

OF FRANKLIN COUNTY, TENNESSEE

CANDI SHERRI TAYLOR GOLDEN)

vs.)

STONEY GENE GOLDEN) NO. 10,029

_____)

Received From

Chancellor
Filed and Enrolled

Sept. 29
Dorothy Hunter
Clerk & Master

DECREE

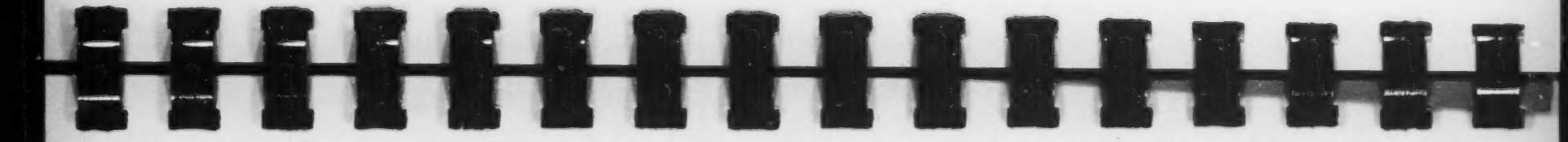
This cause came on to be heard on this 20th day of August, 1982, before the Honorable Tyrus H. Cobb, Chancellor, sitting by interchange with the Honorable L. F. Stewart, Chancellor, upon the complaint filed by the plaintiff, Candi Sherri Taylor Golden, the answer and cross-complaint filed by the defendant, Stoney Gene Golden, the answer filed

thereto by plaintiff, the oral testimony of witnesses who appeared and were examined in open court and upon the entire record filed in this cause.

And it satisfactorily appearing to the Court from the proof that the allegations contained in the complaint of plaintiff are true and amply sustained by the proof and that the plaintiff is entitled to an absolute divorce from the defendant in that the defendant has been guilty of such cruel and inhuman treatment and conduct toward plaintiff as renders cohabitation unsafe and improper, or for her to be under his dominion and control:

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that the bonds of matrimony heretofore subsisting between plaintiff and defendant be and they are hereby absolutely and forever dissolved.

It is further ORDERED that the



counter of cross-complaint of the defendant, Stoney Gene Golden, is without merit and is herby dismissed.

It further appearing to the Court from the proof that the plaintiff is a woman of good moral character, is worthy and should be awarded the custody of the child, it is, accordingly, ORDERED, ADJUDGED AND DECREED that the custody of Chasity Golden, be and it is hereby decreed to plaintiff, but the defendant may see and visit with said child every other week from 10:00 A.M. on Saturday morning to 5:00 P.M. o'clock on Sunday afternoon. The plaintiff will deliver the child to the front of the Chuckwagon Cafe at 10:00 A.M. on every other Saturday morning and the defendant will return said child to the Chuckwagon Cafe on the square in Winchester at 5:00 P.M. on Sunday. Both parties are expressly enjoined from removing the child from the

jurisdiction of this Court.

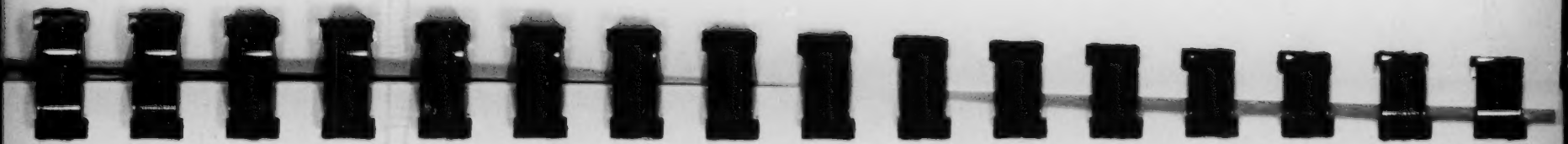
It is further ORDERED that defendant shall pay directly to the plaintiff the sum of $20.00 per week for the support of said child.

A judgment in the amount of $198.00 is rendered against the defendant in favor of the plaintiff, which represents one-half (1/2) of the joint income tax refund of the parties and execution may issue for the collection of same, if necessary.

The costs of the cause are adjudged against the defendant, for which execution may issue if necessary.

This cause is retained in Court pursuant to statute and either party may apply for the enforcement and/or modification of this decree whenever necessary.

/s/
Tyrus H. Cobb
Chancellor



APPROVED FOR ENTRY:

/s/
Joe S. Bean
Attorney for Plaintiff

/s/
Jerre M. Hood
Attorney for Defendant

IN THE CHANCERY COURT OF

FRANKLIN COUNTY, TENNESSEE

CANDIE SHERRI TAYLOR GOLDEN,)

Plaintiff,)

vs.)

STONEY GENE GOLDEN,) NO. 10,029

Defendant.)

)

FILED IN OFFICE

July 6, 1982
Time 2:15 P.M.

Dorothy Hunter
Clerk and Master
Franklin County, Tenn.

ANSWER AND COUNTER-COMPLAINT

Comes now the defendant, Stoney Gene Golden for his answer to the complaint for divorce filed herein against him would state as follows:

1. Defendant admits the statistical information as contained in paragraph 1 of the complaint except defendant avers that

Exhibit "B"

the date of separation as being May 22, 1982.

2. Defendant admits that the parties were married in Coffee County, Tennessee on September 12, 1979 and that they are residents of the State of Tennessee. Defendant and plaintiff were temporarily residing in Panama City, Florida when plaintiff abruptly left the defendant without just cause or provocation. Defendant denies that plaintiff has any grounds for divorce. Defendant admits that one (1) child, Chasity Golden, age 2 years old, has resulted from this marriage.

. . .

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA IN AND
FOR THE COUNTY OF PIMA

STONEY GENE GOLDEN, Petitioner, vs. CLARENCE W. DUPNIK, Sheriff of Pima County, Arizona, Respondent, and The State of Arizona, Real Party In Interest	)	No. H-1020

TRANSCRIPT OF PROCEEDINGS
Petition for Writ of Habeas Corpus
August 30, 1985

THE HON. THOMAS MEEHAN, Judge
Division 16

APPEARANCES:

PAUL TANG, Deputy County Attorney

LORI A. PETERSON, Assistant Public Defender

and Kathleen McCarthy, Esq.

Kathryn S. Anderson, RPR
Official Court Reporter

Exhibit "C"

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RICKY MACEY

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* * * * *

August 30, 1985

Tucson, Arizona

PROCEEDINGS

THE COURT: Stoney Gene Golden versus Clarence Dupnik, State of Arizona, petitioner's application for writ of application H-1020.

Lori Peterson for the petitioner, Paul Tang for the respondents.

You want to go ahead, Lori?

MS. PETERSON: Okay. Judge, I'm willing to proceed however you would like me to on this. If you'd like me just to offer my testimony further or whether you'd like me to make an opening -- if you have a general ideal what we're trying to do, I won't bother with an opening.

THE COURT: I've read the file.

MS. PETERSON: Okay. I'll call my

first witness, Stoney Golden.

MR. Tang: Invoke the Rule at this time as to any other witnesses.

Your Honor, also like to raise a motion in limine at this time as well. Your Honor, as we know, as you've read through the pleadings, there's been allegations made in this writ of habeas corpus. My motion in limine basically is that this Court has jurisdiction to hear only some certain issues, and those issues are whether or not this is Stoney Golden, whether or not he's the individual charged with the crime of kidnapping and whether or not the documentation in this case is proper. Any other issues are irrelevant and immaterial to the proceedings at hand as well as out of this Court's jurisdiction.

For that reason I would urge the Court to grant the motion in limine to

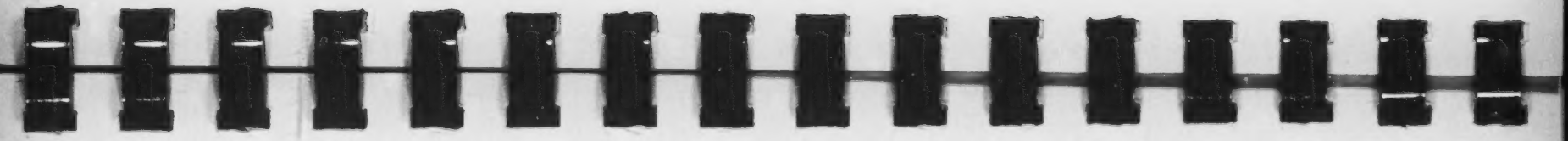
order all the witnesses, whoever they may be, other than those issues that are before the Court pursuant to ACC 13-3845, as well as the case law that stands, to preclude any other testimony.

THE COURT: I don't know what Lori's going to do, I really don't, so. . .

MRS. PETERSON: Okay, Judge. What I would like to do first of all is supply some evidence about the situation back in Tennessee.

Now a great deal of what I have to introduce does have to do with the three things that Mr. Tang just mentioned.

I also know -- would like just for the Court to be aware of the situation back there very briefly so that if you feel that you must rule against us on the merits, that you have some idea of the situation so that we can receive a stay from you so that



we can file a notice of appeal. I think it would be very helpful to the Court to have a very brief understanding of the situation in Tennessee. And --

THE COURT: Lori, you set it out pretty well in your memorandum and to be --

MR. PETERSON: That's true, Judge. And like I say, I intend to keep it quite brief.

THE COURT: Go ahead if you want to do it.

MS. PETERSON: Call Stoney Golden to the stand.

THE COURT: All right, Mr. Golden, come up and be sworn please.

MS. PETERSON: Also like to announce the appearance of Kathleen McCarthy also at the table.

MS. McCARTHY: I'm the attorney in the domestic case. I'm helping out with

this.

(Witness duly sworn.)

STONEY GENE GOLDEN

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PETERSON:

Q Stoney, please state your entire name for the record.

A Stoney Gene Golden.

Q How old are you?

A Twenty-three.

Q How long have you lived in Arizona?

A Approximately two years.

Q Stoney, were you arrested in May of this year?

A Yes, I was.

Q Could you tell us what the

charges were?

A The charges were fugitive kidnapping.

Q Okay. Who were you alleged to have kidnapped?

A My son Chasey Golden.

Q I would like to just refer you back to a few years ago, the situation in Tennessee; were you married in 1980 and 1981?

A Yes, ma'am, I was.

Q Okay. Who were you married to?

A Candie Taylor.

Q Did you have a child with her?

A Yes, I did, Chasey Golden.

Q Did you live in Tennessee during the first few years of your marriage?

A Yes, I lived in Tennessee up until 1981.

Q Okay. Did you ever move away

from Tennessee?

A Yes, I did.

Q Okay. Could you tell the Court when you moved and why?

A I moved in 1981 to the State of Florida. And the reasons for my move was extended violence from -- basically and mostly from my wife's stepfather, Lonnie Taylor.

At the time that I moved in 1981 to Florida, her stepfather had pulled a gun and tried to shoot me.

A few months later she filed for divorce; went on for a month or so; she dropped it before it got to court.

MR. TANG: I object, your Honor, narrative here.

THE COURT: Paul, I'd like to get done. I've got a jury coming back in 10 minutes.

Go ahead.

BY MS. PETERSON:

Q Go ahead, sir.

A And after she dropped -- dismissed the pleadings for divorce, I then moved to Florida because of the violence.

This wasn't the only incident that something had occurred.

Q Okay. Did your wife move with you to Florida?

A Yes, she did.

Q Okay. Did the child move with you?

A Yes, he did.

Q When you got there, did you get a job?

A Yes, my wife and I both had employment in Florida for the year we were there.

Q Did you intend to remain in

Florida?

A Yes, I did. We moved everything that we had. We sold everything that we had in the State of Tennessee and took all the capital and everything and got us a place to stay in Florida and we were living and working there. I had nothing left in Tennessee.

Q Okay. Did any other members of your family move to Florida also?

A Yes. My brother Rocky moved to Florida at approximately the same time that I did. And later on my mother and father and my other brother had moved our family business to Florida.

Q All right. Did something happen that caused you to move back to Tennessee after having lived in Florida?

A Yes. I had gone to work one night. Earlier in the evening my mother

and father had planned a trip to go back to Tennessee to tie up some loose ends, business deals, they had a home for sale. And my wife and I were both working at the time.

And we agreed that it would be better to let my little boy go with them over the two-day period they were going to be gone because we were working anyway. And I was having to work in the jewelry store and a job at night also. So we both agreed that, you know, the child could go with them.

And they left about 5:00 that evening. And I went to work at about 11:00 that night, worked 11 to 7 shift.

When I returned the next morning home, I discovered that my wife was gone. And about an hour or two later my mother and father came back to Florida and they

told me that they had stopped over in Montgomery, Alabama to spend the night at a motel. And when they did, two cars came up, my wife and her stepfather and her mother, and they took my little boy and went down to Tennessee.

I called my attorney -- which the attorney that had represented me in the first two proceedings, that morning when I found out what had happened -- Joe Bean, and I asked him if he could find out if she was there with my little boy and if she had filed for divorce again.

And he told me to call him back in about an hour, which I did. At that time he told me yes, she had filed.

And I asked him: Well, did she file with Floyd Davis, you know, the attorney she had used before?

And he said: No, she didn't.

I said: Well, do you know who she did file with?

He said: Well, I filed it for her.

And I asked --

Q This is the man who used to be your attorney on the prior divorce action?

A Yes, he represented me in the same case. And I asked him what I was supposed to do. And he said he suggested I find myself a good attorney.

Q Okay. How long after your wife returned to Tennessee did she file for divorce?

A She was there a matter of hours. She filed it in the morning.

Q Okay. And this is while you were residents of Florida?

A Yes, ma'am.

Q You mentioned Floyd Davis; could you tell me what relationship he had

had with your wife before?

A Well, Floyd Davis had represented my wife in the first two filings for divorce, which she dismissed before they ever got to the court hearing. And he was her attorney in both cases.

MRS. PETERSON: And, Judge, at this point I'd just point out the exhibit where Judge Floyd Don Davis signed the arrest warrants against Stoney.

MR. TANG: I'm not sure that's properly admitted, your honor.

MS. PETERSON: It's already in the writ of habeas corpus.

THE COURT: She's got it attached to the petition, Paul.

I'll tell you how to speed this thing along: Offer the paperwork you have on the extradition, then they'll be in evidence and you can refer to anything you

want to.

MS. PETERSON: Fine, Judge.

THE COURT: What's the exhibit number?

THE CLERK: One.

THE COURT: On stipulation of counsel, State's 1 will be admitted in evidence.

BY MS. PETERSON:

Q Who is representing your wife on the divorce and child custody matters?

A Represented by a man named Ben Lynch.

Q Who's Ben Lynch?

A He's the county and city attorney for Franklin County, Tennessee.

His brother Mike Lynch, which is the prosecutor in my case, they work in the same office together. (sic).

Q Ben and Mike Lynch are law

partners?

A Right. Mike Lynch is the prosecutor and Ben is his brother, which represented by wife.

Q When you returned to Tennessee to deal with the divorce situation that was going on there, did you obtain an attorney?

A Yes, I did. But before I went to Tennessee I tried to hire attorneys in Florida and they wouldn't take the case because they said that there was no way they would a Tennessee court battle.

And so, you know, I was -- Tennessee didn't have any jurisdiction to issue the order for divorce in the first place, so I was trying to fight from Florida and I couldn't do it, so I had to go back to Tennessee.

And I consulted two or three attorneys; no one would take the case. I

finally fired an attorney Jerre Hood. He was the only guy that would take the case.

Q Okay. And could you tell us what happened the day of the divorce trial?

A The day the hearing was supposed to come up before Judge Hannah, which there were only two chancellors in that county that were hearing divorce cases, when we went to the hearing that morning there was a judge there named Tyrus Cobb, which I'd never seen the guy before. My attorney said he hadn't set on cases over there in years; didn't know why he was there.

And later on I found out that he was a close friend of Joe Bean's and they had had breakfast that morning in the cafe across the street from the courthouse.

And during the hearing I brought out that Tennessee had no jurisdiction to issue

the order and that Joe Bean was my attorney previously, and it was ignored by Chancellor Cobb.

Q Did you ever file disciplinary actions against Joe Bean with the State Bar of Tennessee?

A After the hearing had went on and the decree was handed down and everything, I filed charges against Mr. Bean with the State Bar Association, which they have since done an investigation. They said there was no doubt that he shouldn't have done what he had done, but he died before they could render their decision as to what they were going to do.

Q Okay. Go ahead and finish; what happened in court that day?

A Well, the court that day was a total joke. It was a mockery.

I went in and everything that I

told and all the evidence that I supplied, such as them not having jurisdiction and Mr. Bean was my attorney, the judge sat up there and ate popcorn and Candie and slept part of the time. (sic).

When the hearing was over he made no deliberation at all. He didn't say anything, he didn't take a recess, not even for a moment, he just handed down his decision as to what he was going to do.

Q What was his decision?

A He granted her full custody and gave me bi-weekly visitation.

Q Okay. Did you try to appeal that judgment of the court?

A Yes, I did. I tried to get my attorney Jerre Hood to appeal time and time again.

And he said: We can't appeal. He said: We can't appeal.

I said: Well, what can we do?

He said the only thing we can do is petition to modify, which I did.

Q Okay. And did you petition to modify?

A Yes, I did.

Q Okay. Tell us what happened with that?

A Well, at that time I petitioned to modify and my wife had gone and hired Ben Lynch to represent her at that time because the State Bar Association was conducting their investigation on Mr. Bean. And at that time I -- there was a not of abuse going on.

Q Abuse, what do you mean?

A Child abuse for my child. Every time I would get him he would have bruises over his entire body.

His toes were cut at one point,

and I asked him what happened to his toes. They were cut, the same type cut on each toe, real deep gashes. I asked him what happened and he said that Chris, which is Lonnie Taylor's mentally retarded son, held him down and cut him with a knife.

I took him to the doctor that day and the doctor, Alex Jones, said that the only way that the child could have been getting the type of bruises that he was getting was from being abused. And he said that he would testify to that effect in court.

Q Did you try to get anyone in Tennessee to look into the abuse of the child?

A Yes, I did. I contacted the Department of Human Services which they said that they would send some out, which they did. And the person they sent out was

Janice Clardy, which was a very young lady that had gone to high school with my wife. They were very close friends.

And upon her investigation she did not see the child. And while she was there doing the investigation, Lonnie Taylor came in and told her to leave and to never return again.

And that's exactly what she did.

Q This is the Department of Human Services Worker?

A Right, case worker, Janice Clardy.

Q Ever ask her to do any further investigation?

A Well, later on I found out that someone else had contacted the Department of Human Services and reported the abuse on my child. And when I found out that out, I

went down there and talked to Janice Clardy and I asked her what type of findings she found on her next investigation.

She said: Well, I didn't do any investigation.

I said: Why not?

And she said: As far as I'm concerned, the case is closed.

Q Did you contact anybody else to try to get help for your child?

A I wrote letters to Senator Jim Sasser, Senator Howard Baker, Congressman Albert Gore, Lamar Alexander, the Governor of Alabama; even wrote a letter to the President.

I contacted child abuse organizations, the Hank Snow Foundation, National Committee Against Child Abuse in Chicago. And all of these people I contacted referred me directly back to the

Department of Human Services.

And even if the Department of Human Services had found any type of abuse, it is my understanding that it would have been directed then to Mike Lynch, which is my wife's attorney's brother.

Q Okay. Stoney, since this thing happened in Arizona here, since you were picked up on the warrant, have you tried to get an attorney to represent you in Tennessee?

A Yes. And I cannot get anyone to represent me in Tennessee.

One attorney had worked on the case for a while and he finally quit. He said that life was just too short to practice law in Franklin County.

MS. PETERSON: I don't have any further questions, your honor.

THE COURT: Paul.

MR. TANG: Just a couple of questions.

CROSS-EXAMINATION

BY MR. TANG:

Q Sir, you did take your son out of Tennessee and bring him to Arizona?

A I took my child away from the people that were abusing him.

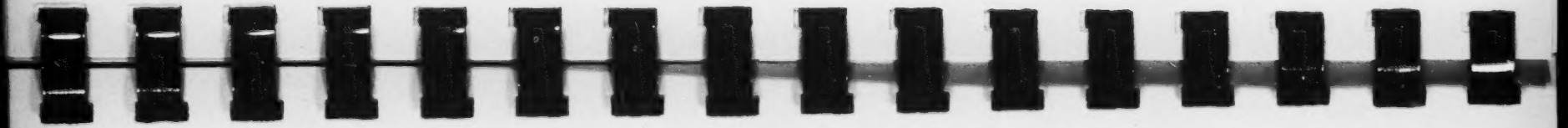
Q Okay. And Tennessee has charged you with kidnapping in that case?

A Yes. Tennessee has no jurisdiction to have the case in the first place.

Q And you are Stoney Golden; is that right?

A I'm Stoney Golden.

Q Tennessee is seeking to extradite you for those -- and for that charge of kidnapping; is that correct?



A Yes.

MR. TANG: I have nothing further.

MS. PETERSON: I have nothing further, your Honor.

THE COURT: All right, thank you, sir.

DEFENDANT GOLDEN: Thank you.

THE COURT: Call your next witness.

MS. PEDERSON: Judge, like to call Cindy Harrison Golden.

MR. TANG: Judge, Mr. Peasley is present. We can do that waiver thing, initial appearance.

MS. PETERSON: Fine with me.

THE COURT: Tell him to come in.

(Pause in present proceeding.)

THE COURT: All right, Lori, call your next witness.

MS. PETERSON: Yes, Judge, call Cindy Harrison Golden.

(Witness duly sworn.)

CINDY HARRISON GOLDEN,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PETERSON:

Q Cindy, would you please state your full name for the record?

A Cindy Harrison Golden.

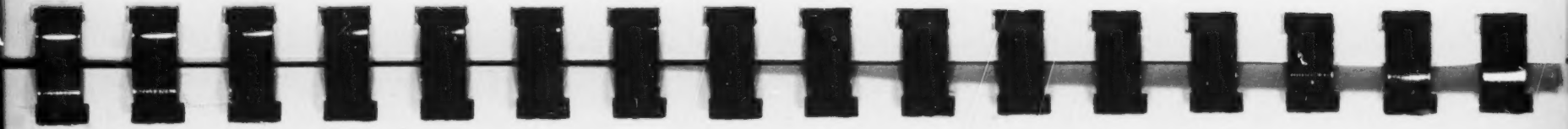
Q Would you move up a little so people can hear you?

A Cindy Harrison Golden.

Q What's your relationship to Rocky Golden?

A I'm married to Rocky Golden.

Q You're Stoney Golden's sister-in-law?



A That's correct.

Q Cindy, I have a couple of questions I'd like to ask you. First of all, you were involved in an incident in Indiana I believe when you were with Mr. and Mrs. Golden, Stoney's parents. Could you tell the Court about what happened in Dire, Indiana?

MR. TANG: Your Honor -- excuse me --just show my continuing objection.

THE COURT: All right, Paul. I want to get it done.

THE WITNESS: Okay, all right. I went to visit the Goldens and Mr. Golden's sister in Dire, Indiana. Okay. I was there approximately four or five days when they brought -- Dyer City Police brought three warrants to Mrs. Nolly Gee's (Ph). home. Okay. One was for myself, Mr. and Mrs. Golden. We were charged with

accessory to kidnapping.

Q Is this based on the kidnapping by Stoney Golden?

A That's correct.

Q Okay. And did the Dyer police arrest you?

A Yes, they arrested us and took us to Dryer City Police Station.

Q Okay. You testified that warrant charged you with accessory to kidnapping?

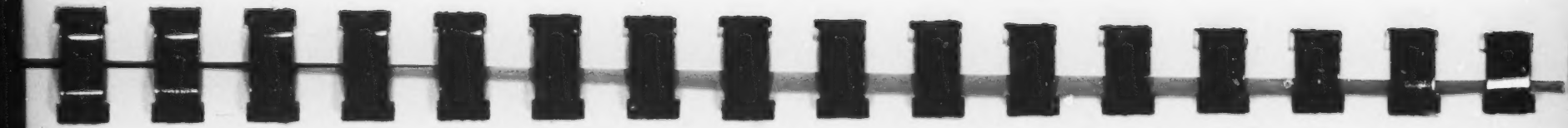
A That's correct.

Q When you got to the police station, tell us what happened?

A Okay. When we pulled into the police station we saw Candie and Lonnie Taylor's car sitting about in front of the station.

Q Candie is Stoney's ex wife?

A Right.



Okay, we went in and we had a seat. Okay. And in the other room -- Candie and Lonnie Taylor were in another room. And Detective Barnes was questioning them and talking to them.

Okay. In the meantime we had my mother Mary Harrison and Joe Clower (Ph.) to make our bond in Tennessee.

Okay. Detective Barnes came out of the room after talking to Candie and Lonnie Taylor --

Q Could I ask you, had they been the ones who brought the warrants from Tennessee?

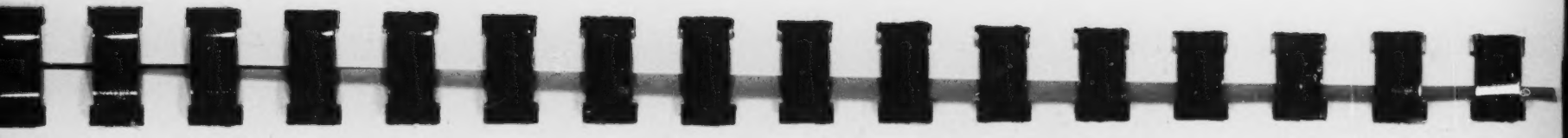
A Yes, yes, they were.

Q Are they law enforcement officials?

A No, they're not.

Q Go ahead.

A Okay. Detective Barnes came



out of the room after speaking with Candie and Lonnie. He was real mad and he was red in the face and he says: You people are free to go. He says: These papers -- these warrants aren't worth the paper they're written on. He says: I sent them on their way and told them they wasn't in the back woods of Tennessee and they could get out of Indiana. That's the exact words he said.

Okay. So we left there and went home. Okay. And they scheduled a preliminary hearing in Tennessee on February 23rd --

Q So you were still charged with accessory to kidnapping?

A Yes, 'cause they posted bond for us in Tennessee.

Q Okay.

A Okay. The preliminary hearing

was set for February 23rd, before Judge Davis, Floyd Davis. We went before Floyd Dan Davis and we hired Nelson Forrester of Tullahoma to represent us.

Okay. We went before him. We were questioned and --

Q Who were you questioned by?

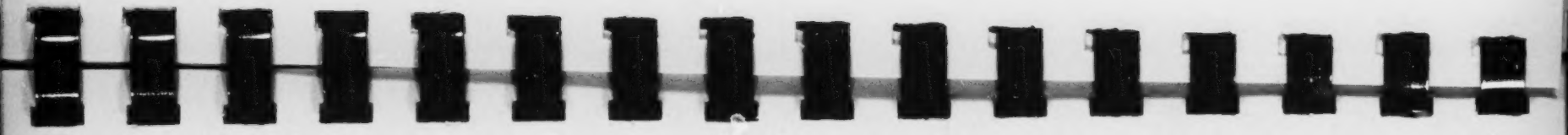
A The assistant DA, Mike Lynch.

Q Go ahead.

A He questioned us and everything and then they kept the warrants on Mrs. Golden and myself. And Mr. Golden -- the warrant on Mr. Golden was dropped, thrown out, whatever. Okay. They kept the warrants on me and Mrs. Golden. They said there was probable cause. Okay. And he bound us over to the grand jury.

Q Okay. Do you know a man by the name of Mike Kirk?

A Yes, I do.



Q Can you tell us who he is and what his capacity is in Franklin County?

A Okay. He's the Sheriff of Franklin County.

Q Okay. Could you tell the Court what Sheriff Kirk stated to your father-in-law regarding the safety of Stoney Golden?

A Okay. He stated that Stoney would not be safe in his jail, that he would have to carry him to and from his home in order for him to be safe but he wouldn't agree to do so.

Q He was not willing to --

A Yes.

Q -- take any measures to protect Stoney?

A That's correct.

MS. PETERSON: I have no further questions Judge.

THE COURT: Paul, do you have anything?

MR. TANG: I have no questions of the witness.

THE COURT: Thank you, ma'am.

Lori, do you have anything else?

MS. PETERSON: Judge, I think we just have one last witness who Kathleen McCarthy will call; be very short.

MS. McCARTHY: Debra Edler.

(Witness sworn.)

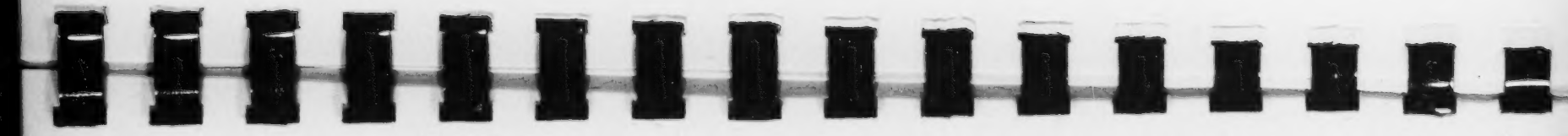
DEBRA EDLER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MRS. McCARTHY:

Q Would you state your name, please?



A My name is Debra Edler.

Q What is your employment?

A I am currently employed as a legal assistant in the law office of Kathleen McCarthy.

Q You're trained as a legal assistant and paralegal.

A I am trained as a legal assistant and paralegal.

Q As part of the job of legal assistant you were in charge of coordinating the details of the Stoney Golden case, the domestic action at my direction; is that correct?

A Under your supervision and direction, yes.

Q As part of your duties, it's one of your duties to take notes of every non-routine telephone conversation and incidents that take place in the office, is

that correct?

A I generally, as a matter of habit, do take notes and document my conversations both for my own reminders and for messages for you.

Q And did you at some point in May of 1985, have the occasion to talk to a Mr. Ed Prichett?

A I did.

Q Who is Ed Prichett?

A Ed Prichett is an attorney who is from Tennessee.

Q Was he hired by Mr. Stoney Golden to represent some of his interests in Tennessee during the pendency of the domestic action here?

A Yes.

Q Okay. Can you tell the Court about a telephone conversation that occurred with you and Mr. Prichett on May

14, 1985?

A Okay. On May 14, 1985, was the first time I did have a conversation with Mr. Prichett. We had gotten a date back on an OSC hearing and they had contacted Mr. Prichett to represent them on that and for that for service in particular.

I explained we had the date back. It was set very soon, it was for the following Friday. We had been -- we would be sending two sets of the OSC, both the petition and the order. They were to be served on Lonnie Taylor and Candie Golden who at that time we also believed was known as Candie Pennington.

I gave him a P. O. Box address on Cumberland Road, Route One, provided to me by the brother of Stoney, Rocky Golden.

I also informed him that we believed Candie was now working at a

Shonny's Restaurant on Wilson Avenue in Tullahoma. I gave him the telephone number of the restaurant, talked about the urgency in getting the papers served right away. He did know the hearing date was set for Friday.

He agreed with me, yes, he would get them served as soon as he received them.

I mailed them out that same day by Federal Express mail, and I sent a cover letter along with that documenting our whole telephone conversation. I also stressed in that time that he should contact our office if he ran into any problems with the service and we would need a notarized affidavit or return of service for filing with the court here once the service was made there.

Q Okay. When was your next

telephone conversation with Mr. Prichett?

A I had a telephone conversation with Mr. Prichett on the following day on Wednesday the 15th. At that time he said yes he had received the documents Federal Express and he planned to serve Lonnie Taylor that evening.

Q Okay. When was your next contact with him?

A The following day on Thursday the 16th, I had a telephone conversation with Mr. Prichett. He said that he had called the restaurant, gone down there found out that Candie Golden had taken the time off from work, was not expected back until Monday the 26th, so that he was unable to serve her.

But he was, however, able to serve Lonnie Taylor. He had gone down the Cumberland Road per our instructions, and

had been unable to find the address, so he returned to town. And I'm uncertain -- did not document what town but he returned to town and had a sheriff -- there again I do not know what sheriff -- had a sheriff telephone Mr. Taylor who --

Then Mr. Taylor came down to the sheriff's office. He had a boy with him, approximately age 12 or 13. He was not the child in question.

And Mr. Prichett then said he had the papers. He explained what they were for and the date. And at that time he said that Mr. Taylor laughed and said, well, he might as well throw them in the wastebasket.

Mr. Prichett told him, no, that he had to personally hand them to him and once Mr. Taylor had the papers, he could do whatever he felt best. So he did.

Mr. Prichett told me that he placed the papers in Mr. Taylor's hand and he, Mr. Taylor, in turn gave them to the boy and told them (sic) to throw them in the wastebasket.

Q What was your next telephone conversation with him?

A On Friday, May 17th, we were getting a little panicky around the office; hearing was scheduled for that afternoon.

We did not receive the affidavit in the overnight mail so I telephoned Mr. Prichett. I told him we'd not received the affidavit or the return of service. And at that point he told me there would not be one.

I asked him why and very tensely he said: I had a visit.

I did not understand what he said. I asked him, I said: I don't

understand what you said; asked him what he meant.

He said he had a visit from the DA and cut me off very quickly.

I in turn transferred the call to Ms. McCarthy; did not speak to him further.

Q Anything significant about his tone of voice as compared to the previous --

A Yeah. The tonal quality changed amazingly. All previous conversations with Mr. Prichett -- he had a very thick and heavy Tennessee accent. I had gone to school in Alabama. We joked quite a bit in covering the business end of it; still got in the fact he talked in such a southern accent. Jovial, friendly conversation. Very cooperative the whole time and really, yeah, we're going to do this.

On that particular day he was very tense and uptight and the tonal quality was just amazingly different. He cut me short.

Q Let me show what's been identified as Defendant's Exhibit A. Do these documents represent the correspondence in the Federal Express notations that you sent to Mr. Prichett?

A Yes, they do.

Q Subsequently we attempted to get service with a Mr. Cheatham; is that correct?

A That's correct.

Q Page one of Exhibit A represents the letter that we sent to Mr. Cheatman to affect sofar as Mr. Taylor --

A That's correct.

Q To the best of your knowledge did we send correspondence in the packet of

paperwork to have him served?

A Yes, we did for Mr. Taylor, not anybody else.

Q Did we ever receive service back on that?

A No, we did not.

MRS. McCARTHY: No further questions.

THE COURT: Anything, Paul?

MR. TANG: No further questions.

MS. McCARTHY: Move for the admission of Exhibit A.

THE COURT: A will be admitted.

MS. PETERSON: Judge, we have no further witnesses.

THE COURT: Thank you.

Anything Paul?

MR. TANG: Yeah, call Ricky Macey from our office.

THE COURT: Statute Section?

MS. PETERSON: 13-3845, I believe. 3845, yes.

(Witness duly sworn.)

RICKEY MACEY,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TANG:

Q Please state your name.

A Ricky Macey.

Q And what do you do, ma'am?

A I'm the extradition officer in the County Attorney's Office.

Q How long have you served as the extradition officer in the County Attorney's Office?

A Just over 12 years.

Q Basically will you describe to us your duties?

A When a warrant is issued in another state for somebody who leaves without permission of the state and they're located here in Pima County, they're brought to court and I prepare the necessary paperwork and follow that matter through to the time the governor's warrant arrives from another state and that person is served.

Q In the course of your duties have you become familiar with the case involving Stoney Gene Golden?

A Yes, I have.

Q Can you tell us briefly how you became involved with that case?

A Well, the first notice that I had was when a warrant was issued from Tennessee on a charge of kidnapping and Mr. Golden was arrested and brought to the Justice Court initial appearances. And I

believe bond was set. I'm not sure whether it was or not at this point but I think it was.

Q Was Stoney Golden then served with that warrant?

A To my knowledge he was.

Q Okay. I'm going to show you what's been marked State's No. 1 for identification.

THE COURT: In evidence.

THE WITNESSES: You're talking about the governor's warrant?

BY MR. TANG:

Q That's right. State's No. 1 has been admitted into evidence according to Judge Meehan.

A Yes. This is the governor's warrant.

Q And from what location is that governor's warrant?

A This is from the State of Tennessee.

Q Okay. Does the governor's warrant from the State of Tennessee allege a felony?

A Yes, it does.

Q And is that felony kidnapping?

A Yes, it is.

Q Is that for Stoney Gene Golden?

A Yes, it is.

Q All right. And have you examined that paperwork?

A Yes, I have.

Q And in examining that paperwork, does the paperwork seem like it's in order?

A Beg your pardon?

Q In examining that paperwork, does the paperwork seem like it's in order?

A Yes, it does. It appears to be.

Q Okay. And was a governor's warrant also served in this case on Mr. Golden?

A Yes, it was.

Q And did you have an opportunity to examine that paperwork?

A Yes, I did.

Q Was the paperwork from the governor's office also in proper order?

A Yes.

Q One last question, Ms. Macey: Does the document from Tennessee contain a photo as well as prima facie identification?

A Yes, it does.

THE COURT: It's a already admitted.

MR. TANG: I have nothing further.

THE COURT: Lori.

CROSS-EXAMINATION

BY MS. PETERSON:

Q Ma'am, did you also receive a copy of the supporting documents, the documents in support of the extradition?

A Yes, we usually do.

Q Okay. Was one of the documents that was sent as part of the supporting documents a copy of the divorce decree between Stoney Golden and Candie Golden?

A I'm not sure. I think it was. Yes, I think I remember seeing it.

Q Okay. Do you remember whether or not the warrant, the arrest warrant which was sent as part of the supporting documents, was signed by a man by the name of Judge Floyd Don Davis?

A Yes, I think it was.

Q And as part of the documents that were served on Stoney Golden, the governor's warrant, is it -- does it direct

that Stoney be turned over to the custody of Sheriff Mike Kirk?

A Uh-huh, yes it does.

MS. PETERSON: I have no further questions.

MR. TANG: No, nothing on redirect, Judge.

THE COURT: Thanks.

MR. TANG: I have no further witnesses, your Honor.

THE COURT: Well, you want to stipulate there is a governor's warrant from the Governor of the State of Arizona in compliance with State's Exhibit A?

MS. PETERSON: In compliance with State's Exhibit A?

THE COURT: Well, to support State's Exhibit A.

MS. PETERSON: Yes, I'll stipulate to that.

MR. TANG: Yeah.

THE COURT: Okay.

MS. PETERSON: Judge, I know you've read the warrant -- I'm sorry -- the writ, so I'm not going to go over it line by line or anything like that. But I think that I would like to point out the reason for the hearing today, which is that the situation in Tennessee, the law back in Tennessee is simply corrupt.

The judge who signs the warrant against Stoney is his ex-wife's former attorney; the district attorney prosecuting Stoney is his brother, is currently representing his ex-wife.

I've stated in my memorandum in support of the writ of habeas corpus case law which says that, for example, whenever an arrest warrant or search warrant is issued, the person issuing it must be a

neutral and detached magistrate.

I think that we are not challenging probable cause. We do not know whether or not the judge had probable cause to issue the warrant. We're not trying to challenge that.

What we're trying to say is that the warrant is simply unlawful and it cannot be honored because the judge was not a neutral and detached magistrate.

And I cited the Supreme Court case of Connally versus Georgia which says that one who has a direct or personal interest in a case does not qualify as a neutral and detached magistrate. And I've also cited the case of Wong Sun versus United States saying that an invalid warrant simply cannot be honored.

And this warrant is invalid for the reason I've just stated.

Some of the cases cited in the County Attorney's response to my writ seem to bolster the defense's position here. One case that is cited is Applications of Oppenheimer which states that a fugitive must be turned over if there is a valid warrant. I think the clear implication of that is if there is not a valid warrant based on the facts I've just given you, then the fugitive need not be turned over and that is up to the discretion of the trial court.

There's case law that says in Arizona, Montgomery versus Blubaum which is 26 Arizona Appeals page 146, that you don't have to look beyond the documentary assertions of the demanding state to see if there was bad faith. That means the court doesn't have to, the clear implication being that if the court chooses to, he can

look beyond the documentary assertions in the demanding state's warrant and see if there is bad faith.

Again, you don't have to but if you choose to, you do have that power.

And again, Judge, we are not trying to contest the innocence or guilt at this hearing of Stoney Golden. What we're contesting are other matters such as I already raised: Conflict of interest back there and the fact that the State of Tennessee had no jurisdiction whatsoever to render a divorce decree when the woman had lived there for one day after going to --

THE COURT: This isn't the proper place to litigate that and I don't intend to litigate it.

MS. PETERSON: Well, Judge, I think jurisdiction can be brought up at any point and --

THE COURT: Well, the jurisdiction of the validity of the divorce decree, as far as I know, can't be brought up in application for writ of habeas corpus to release somebody from custody based on a governor's warrant issued by the State of Arizona.

MS. PETERSON: Judge, I think it can be because one of the things they have to show substantial proof that a crime was committed.

When you've got as part of the supporting documents sent by Tennessee they send a copy of the divorce decree, when they're saying that there is a divorce and the reason that he had no right to the custody of the child is because of the divorce and the divorce is utterly invalid, then there's no reason to believe that they had jurisdiction, therefore, a crime was

not committed.

THE COURT: You don't litigate that issue here --

MS. PETERSON: Okay.

THE COURT: -- in my opinion.

You know, Lori, speed this thing along, I've heard the testimony from your client, his sister and Kathy's. I'm not going to argue with you one way or another about what they say happened back there.

But, you know, it's one side of it. I'm sure there's another side just like everything else.

All I know is I have the proper documentation in front of me from the State of Tennessee to support the issuance of an (sic) government's warrant by the State of Arizona.

You have stipulated there is a

governor's warrant issued by Governor Babbitt based on the -- what I feel is valid documentation as required by the statute by the requesting state, the State of Tennessee.

And the identity of the defendant's been admitted to right off the witness stand, so there's no question he's the person that Tennessee is requesting.

There's no question that probable cause has been set forth by reason of the grand jury indictment to support the issuance of an warrant.

There may be all the conflicts that you talk about. But in my opinion, the requirements of the statute have been met. There is a valid governor's warrant to extradite this man to the State of Tennessee issued by Governor Babbitt. And once I make that determination, you know,

those three things are met, identity of the defendant, the probable cause, the proper affidavits and the paperwork having been filed, I perform a routine administrative duty, and that's all I do.

So show the application for writ of habeas corpus is denied.

MS. PETERSON: In that case, your Honor, if I could ask you to do one other thing: First of all, we would like to file a notice of appeal and we would like the Court to grant a stay of the execution.

THE COURT: You don't appeal this, Lori. All you do is file a special action and ask for a stay.

MS. PETERSON: Will you grant us a stay?

THE COURT: You can get it done today. All you've got to do is walk over

with the petition. If they feel a stay is appropriate, they'll issue it.

MS. PETERSON: Okay. Judge, I'd ask for one further thing, that is that if you would be willing to grant a stay, I had already had contact with Bob Corbin, the attorney general, who would be willing to do an investigation into this case if you were to make a court order -- --

THE COURT: Lori, I read with interest that in the paper. I am sure the attorney general of this state was not serious when he meant that he would send investigators to the State of Tennessee to determine whether or not their legal system is corrupt. I don't have any authority to order him to do that anyway and I decline to do so.

C E R T I F I C A T E

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I, Kathryn S. Anderson, do hereby certify that as an Official Court Reporter for Pima County, I was present at the foregoing proceedings; that while there I took down in stenographic shorthand all the oral testimony adduced and the proceedings had; that my stenographic shorthand notes were transcribed by me: and that the foregoing pages contain a full, true and correct transcript of the matter as set forth in the title page hereto.

/s/ Kathryn S. Anderson
KATHRYN S. ANDERSON, RPR
Official Court Reporter